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No. A-313

IN THE SUPREME COURT

OF THE

UNITED STATES

October Term, 1985

RODNEY F. STICH

Appellant

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SOLANO;
COURT OF APPEAL, STATE OF CALIFORNIA,
FIRST APPELLATE DISTRICT;
EMMA W. STICH,

Appellees.

On Appeal from the Court of Appeal
of the State of California

JURISDICTIONAL STATEMENT

Rodney F. Stich
Post Office Box 11455
Reno, Nevada 89510
Telephone: (702) 826-1185
Appellant in pro se

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QUESTIONS PRESENTED FOR REVIEW

1. Can California courts order a taking and destruction of major personal and property rights while a party is in a protected special appearance status?

2. Can California courts order the taking and destruction of these rights without personal jurisdiction, arising out of procedural and substantive due process rights?

3. Can California courts order severe financial sanctions against a party who exercised his constitutional procedural due process remedies upon suffering great irreparable harm following the massive violations of substantive law protection under state, federal and constitutional law?

4. Can California courts dictate, retroactively, to residents of

jurisdictions foreign to California, illegal and unconstitutional due process requirements that must be met before California courts will recognize previously adjudicated divorce judgments and related personal and property rights?

5. Can California courts dictate to courts foreign to California, and residents of such foreign courts, other bases for personal jurisdiction than are required by the original court, which are not required by any other known court within the United States, any known foreign country court, or even by California courts?

6. Are California courts interpret, apply, and violate, numerous substantive and procedural due process protections in state and federal law relevant to judgment recognition, right to a divorce,

right to have it recognized when exercising constitutional travel rights?

7. Are California courts unconstitutionally interpreting and applying state law prohibiting collateral attacks or relitigation of prior divorce judgments, the protection relevant to a protected special appearance, the protection against orders rendered by a state court judge lacking personal jurisdiction, and orders for sanctions and the interpretations of a frivolous appeal?

8. Do California courts have the right to conduct a marriage termination action over Nevada and Texas residents who are already legally divorced, under law of their respective states of residence, under California law, and under federal divorce law recognition requirements?

9. Is the voiding of appellant's personal and property rights and voiding the judicial acts of a court foreign to California on the basis of an alleged absence of domicile--21 years ago, an unconstitutional deprivation of due process and equal protection of the law?

10. Are the California courts unconstitutionally violating the right to unabridged interstate travel by their actions?

11. Are the California courts unconstitutionally interpreting and applying state law, including Code of Civil Procedure section 907.1, as they hold that appellant's exercise of procedural due process remedies, in the face of massive violations of due process and equal protection rights, are frivolous acts?

Table of Contents

Page

QUESTIONS PRESENTED.....i

OPINIONS BELOW.....1

JURISDICTIONAL STATEMENT.....2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....2

STATEMENT OF THE CASE.....5

REASONS FOR GRANTING THE WRIT 18

ARGUMENT.....22

I. THE CONSTITUTION, FEDERAL AND CALIFORNIA LAW, REQUIRES THAT A GENERAL APPEARANCE BE MADE BEFORE A CALIFORNIA STATE COURT ACQUIRES PERSONAL JURISDICTION TO RENDER ORDERS TAKING PERSONAL AND PROPERTY RIGHTS.....22

2. THE CALIFORNIA COURTS ARE UNCONSTITUTIONALLY REFUSING TO RECOGNIZE THE 1966 DIVORCE JUDGMENT, AND THE JUDICIAL REGISTRATION OF THAT JUDGMENT IN SISTER STATES....23

3. CALIFORNIA'S CONSTRUCTION OF STATE LAW VIOLATES MAJOR SUBSTANTIVE AND PROCEDURAL RIGHTS OF DIVORCED PERSONS

EXERCISING THEIR CONSTITUTIONAL TRAVEL RIGHTS.....26

4. CALIFORNIA'S RESURRECTION OF THE ABSENCE OF DOMICILE INVALIDATING ARGUMENT WAS OUTLAWED AS UNCONSTITUTIONAL FORTY YEARS AGO.....30

5. THE PUBLISHED DECISION IS RIDDLED WITH PRIMA FACIE VIOLATIONS OF MAJOR AND FUNDAMENTAL CONSTITUTIONAL RIGHTS AND UNCONSTITUTIONAL INTERPRETATIONS AND APPLICATION OF STATE LAW.....32

6. EXERCISE OF CONSTITUTIONAL DUE PROCESS RIGHTS FOLLOWING MASSIVE ILLEGAL TAKINGS OF PERSONAL AND PROPERTY RIGHTS IS NOT CONSIDERED FRIVOLOUS IN A FREE SOCIETY.....35

CONCLUSION.....42

Table of Authorities

FEDERAL CASES

Coe v. Coe (1948)
334 U.S. 378.....25,26

Estin v. Estin (1948)
334 US 541.....26

Kent v. Dulles (1958)
357 U.S. 116.....26

Perrin v. Perrin (1969)
408 F.2d 107.....25,26

Shapiro v. Thompson (1969)
394 U.S. 618.....27

Sherrer v. Sherrer (1948)
334 U.S. 343.....25,26

Vanderbilt v. Vanderbilt (1957)
354 U.S. 416.....25,26

United States v. Guest (1966)
383 U.S. 745.....28

FEDERAL STATUTES

Title 28 U.S.C. 1257(3).....1

Title 42 U.S.C. 1983.....3

CALIFORNIA CASES

In re Marriage of Stich (1985)
167 Cal.App.3d 226.....1,13

Rediker v. Rediker (1950)
35 Cal.2d 796.....25

Scott v. Scott (1958)
51 Cal.2d 249.....25

Spellens v. Spellens (1957)
498 C.2d 10.....25

Whealton v. Whealton (1967)
67 C.2d 656.....26

CALIFORNIA STATUTES

Calif. Civil Code 4356....8,9,24,33

Calif. Civil Code 4554.....23

Calif. Civil Code 5162.....9,23

Calif. Civil Code 5164.....9,23

Calif. Civil Code 5172.....9,23

Code of Civil Procedure 418.10..33,40

Code of Civil Procedure 907.....38

Code of Civil Procedure 902...12,14

Code of Civil Procedure 904.1....14

Code of Civil Procedure 1653.....9

Code of Civil Procedure 1697.....9

Code of Civil Procedure 1698...9,23

Code of Civil Procedure 1699...9,23

Code of Civil Procedure 1713.1...23

Code of Civil Procedure 1713.3...23

Code of Civil Procedure 1713.5...23

Code of Civil Procedure 1908...9,23

Code of Civil Procedure 1913...9,23

Code of Civil Procedure 1915...9,23

Evidence Code 623.....9

Evidence Code 666.....9

Calif. Rule of Court 1201.....23

Calif. Rule of Court 1230....8,9,11

NEW YORK CASES

Rosenstiel v. Rosenstiel (1965)
262 N.Y.S. 86.....22

APPELLANT'S APPENDIX

Appendix A--Calif. Court of
Appeal June 10, 1985 decision

Appendix B--Denial of Petition
for Review by California
Supreme Court.

Appendix C--May 10, 1983 Order of
California Superior Court.

Appendix D--August 30, 1985 Notice of
Appeal to the United States Supreme
Court, filed with the California Court of
Appeal.

Relevant California statutes

Proof of service

OPINIONS BELOW

The opinion of the Court of Appeal of the State of California appears in In re Marriage of Stich (1985) 167 Cal.App.3d 226, and is included herein as Appendix "A."

Denial of appellant's Petition for Review, by the California Supreme Court, dated August 28, 1985, is included herein as Appendix "B."

The initial decision of the California Superior Court, filed May 10, 1983, denying appellant's Motion to Quash and ordering him to pay temporary spousal support, attorney fees and costs. Icluded herein as Appendix "C."

Notice of Appeal to the United States Supreme Court filed with the California Court of Appeal on August 30, 1985, is included herein as Appendix "D."

JURISDICTIONAL STATEMENT

Pursuant to Rules 13(2) and 15 of the Rules of the Supreme Court of the United States, appellant Rodney F. Stich files this jurisdictional statement. The basis for the filing of this appeal is that the Supreme Court of the United States has jurisdiction to review the judgment and published decision entered by the California Court of Appeal.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The jurisdiction of the United States Supreme Court is invoked by 28 U.S.C. section 1257, subparagraph (2).

In the event that the Court does not consider appeal the proper mode of review, Appellant requests that this jurisdictional statement and related papers be regarded and acted upon as a

Petition for Writ of Certiorari, pursuant to 28 U.S.C. § 2103.

The validity of several sections of California law, as construed and applied by the courts of the State of California, are the focus of this case.

This case involves major constitutional issues, including the unconstitutional interpretation and application of state law relative to divorce judgment recognition; protection of a special appearance; protection against orders rendered by a state court judge lacking personal jurisdiction; protection against orders rendered by a state court acting without the statutory requirements for subject matter jurisdiction; inflicting punishing sanctions for exercising appellate remedies when major substantive and

procedural due process protections are violated; and orders violating the right to travel. The issues raised affect all divorced persons exercising their right to unabridged interstate travel, and the law, as interpreted and applied by the California courts.

These constitutional provisions include the following clauses of the United States Constitution:

(a) Due Process and Equal Protection of the law, as provided by the Fourteenth Amendment to the United States Constitution:

> ...nor shall any state deprive any person of life, liberty, or property, without due process of law...;

(b) The right to unabridged interstate travel, as provided by the Commerce

Clause; the Privileges and Immunities Clause of Art. IV, section 2; the Privileges and Immunities Clause of the Fourteenth Amendment; and the Due Process Clause of the Fifth Amendment.

c. The statutory protection provided by Title 42 U.S.C. section 1983, against violation of state law protection, and by a state court judge knowingly acting without personal jurisdiction, acting under color of law.

STATEMENT OF THE CASE

This action arises from a state court case in which appellant was served with a divorce action in 1982, while temporarily residing in California. In that action appellee Emma Stich, a resident of Texas, claimed community property interests in property owned during the 1966 divorce proceedings that were determined, and

agreed, was separate property; and claimed to be community property that property acquired during the 21 years since the 1966 divorce judgment which as a matter of law, is solely the property of appellant. That 1966 divorce judgment and the personal and property rights adjudicated in that judgment have since been reestablished in various courts of the United States (California, Nevada, Oklahoma, Texas) by judicial registration under the Family Law Act and similar state statutes.

In the subsequent two decades following the 1966 divorce appellee Emma Stich declared herself to others, and into the official records of the State of Texas in numerous real estate transactions, to be a divorced woman, a declaration that numerous buyers and

sellers of properties, title companies, and appellant, relied upon.

Appellee Emma Stich acknowledged that there had been a prior divorce judgment rendered in 1966, but argued that California courts would not recognize a divorce judgment rendered by a jurisdiction in which the prior court had not required, had not determined, and appellant had not obtained, the subjective intent of domicile.

This holding subjects to voiding, literally every divorce judgment rendered in the last 20 years, in any court jurisdiction. NO known court jurisdiction or law requires a determination of domicile intent for personal jurisdiction. To do so would unconstitutionally deprive the party of their due process right to invoke court

jurisdiction or to obtain a divorce. Specific decisions of the United States Supreme Court, and their progeny, have held such domicile invalidating arguments as unconstitutional.

After being served with the "divorce" action appellant challenged the California court's personal jurisdiction over him by filing a February 18, 1983 motion to quash, as specifically provided by California law. [1] This filing placed appellant in a protected special appearance status until a decision was rendered on the motion to quash. [2] A decision on the motion to quash had not yet been rendered when this jurisdictional statement was first filed

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[1] California Rule of Court 1230; California Code of Civil Procedure § 418.10(a)(1).

[2] California Civil Code § 4356.

in December 1985.

Appellant's motion to quash was denied a hearing on the February 25, 1983 date set for the hearing, even though appellant offered in evidence the 1966 divorce judgment, which under California law was sufficient to cause the action to be dismissed. [3]

California Code of Civil Procedure section 4356 provides that a party shall remain in a protected special appearance status from the filing of a motion to quash until a final decision is rendered on that motion. A trial relitigating the personal jurisdiction of the 1966 divorce court was forced upon appellant, while in

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[3] California Rule of Court 1230; California Evidence Code sections 623 and 666; California Code of Civil Procedure sections 1908, 1913, 1915, 1713.1, 1713.3, 1713.5, 1697-1699; California Civil Code sections 4554, 5162, 5164, 5172.

that protected appearance status, in August 1985--violating appellant's protection arising from the protected appearance status, and protection in federal and state doctrines, specific decisional law, and statutory law.

Following the earlier February 25, 1983 hearing on the motion to quash and concurrently heard Order to Show Cause for appellant to pay temporary spousal support, attorney fees and costs. (Order filed on May 10, 1983.)

In that same order the California trial court held that the evidence--which the trial court specifically refused to allow appellant to submit, indicated that he had not acquired domicile status during his 1965-1966 residence in the prior court's forum, and therefore that prior court lacked personal jurisdiction

to render that order, (and presumably, the tens of thousands of other judgments rendered by that same court without a requirement for, a determination made, of domicile intent).

After the California trial court denied appellant's motion to dismiss in its May 10, 1983 order and decision, appellant filed a petition for writ of prohibition as specifically provided by California law. [4] This petition was denied a hearing by the California Court of Appeal. Although Justice Mosk was of the opinion that the petition should be heard, it was denied a hearing by the California Supreme Court.

Appellant then filed two appeals of the two orders to pay temporary spousal

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[4] California Rule of Court 1230; California Code of Civil Procedure § 418.10(c).

support, as provided by California law. [5] The basis for the appeals was that the orders were prohibited, as a matter of law, as (a) appellant was in a protected special appearance status; (b) the California court lacked personal jurisdiction over him on procedural and substantive law grounds; (c) the court lacked subject matter jurisdiction on the basis that the statutory requirement of a marriage and absence of a prior divorce judgment did not exist; [6] (d) spousal support was already adjudicated 21 years earlier, and denied, being conclusive of

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[5] California Code of Civil Procedure § 902 and 904.1.

[6] California Rule of Court 1201 and 1230; California Civil Code §§ 4357, 4370, 4371.

the matter under law. [7]

The appeal of the two orders to pay support, fees, and costs, was subsequently heard by the California Court of Appeal, and the decision published. (In re Marriage of Stich (1985) 167 Cal.App.3d 226.) The published decision upheld every violation of procedural and substantive state, federal and constitutional law to which appellant had objected.

The published decision held that appellant's filing of the motion to quash--specifically provided by law when there is a prior divorce judgment, [8]

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[7] California Civil Code § 4456, 5004, 5162, 5164, 5172; California Code of Civil Procedure §§ 1908, 1913, 1915, 1713.1, 1713.3, 1713.5.

[8] California Rule of Court 1230, California Code of Civil Procedure § 418.10.

appellant's filing of a petition for writ of prohibition,[9] and filing of the appeal,[10] were frivolous acts, for which he should be severely punished. The published decision held that appellant--and impliedly any other divorced person, should have immediately abandoned all protection in state, federal and constitutional due process remedies when a 20 year old divorce judgment is attacked, in violation of state and federal law, by the use of an argument specifically held to be unconstitutional by a long line of decisions of the United States Supreme Court, and their progeny. The decision held, and implied, that appellant should have abandoned the

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[9] California Code of Civil Procedure § 418.10.

[10] California Code of Civil Procedure §§ 902 and 904.1.

property rights adjudicated in the 1966 divorce judgment and reestablished by the judicially registered judgment in subsequent states of residence. The decision held that appellant should have immediately abandoned the property rights in properties acquired during the two decades since the 1966 divorce; should have abandoned and stripped a subsequent spouse and children of their property rights (if he had remarried), and that appellant should have willingly submitted to the personal jurisdiction of the California state court judge, who acted without personal or subject matter jurisdiction and in violation of state law, to divide his property rights as of 1986.

Relying upon the unconstitutional interpretation and application of state

law, California Code of Civil Procedure section 907 and Rule of Court 24, the published decision established that any divorced person, including those subsequently remarried, are to be severely penalized with financial sanctions and and chastised in published decisions, making them examples to others, if they object to a stripping of their due process rights. This reasoning and holding is now the law of the State of California, and threatens the millions of divorced persons who have, or will, exercise their constitutional travel rights into California.

Appellant had repeatedly argued in the trial and appellate court proceedings that the actions were an unconstitutional interpretation and application of state law, that the court was acting without

personal jurisdiction, without subject matter jurisdiction, and in violation of state, federal, and constitutional law. He was mocked for bringing up federal and constitutional issues.

Appellant had just been released from the hospital when this decision was rendered, having suffered a stress-induced emergency open heart surgery. After that infamous decision was rendered appellant filed a Petition for Review with the California Supreme Court on July 12, 1985. This petition was denied a hearing on August 28, 1985. A timely appeal to the United States Supreme Court was then filed with the California Court of Appeal on August 30, 1985. Appellant's request for an extension of time to file the jurisdictional statement with this Court was approved by Justice William

Rehnquist on October 24, 1985, extending the filing date to December 26, 1985. The Jurisdictional statement was mailed on December 23, 1965, constituting timely filing.

Irregularities in the handling of the jurisdictional statement followed, as described in separate correspondence. This jurisdictional statement is being submitted in accordance with the writings that followed.

REASONS FOR GRANTING THE WRIT

I. The decisions of the California courts constitute a major restructuring of the United States Constitution, a major taking of rights recognized in the United States and free world countries. The holdings are a raw and abusive taking of long accepted due process and equal protection of the law, and an

unconstitutional interpretation and application of state law adversely affecting every one of the many rights appellant sought to exercise in the illegal and unconstitutional taking of his personal and property rights.

The published holdings in the infamous In re Marriage of Stich decision threatens all citizens of the United States the massive deprivation of state, federal and constitutional rights long held to be human rights within these United States of America.

II. The published decision strips from citizens of the United States:

a. The right to obtain a divorce under recognized bases for personal jurisdiction, and resurrects the domicile invalidating argument that a long line of decisions by this Court, and their

progeny, held to be illegal and unconstitutional since 1948.

b. The right to obtain a prior divorce judgment and to have personal and property rights adjudicated by a court in whose jurisdiction the party resided, recognized by the courts of California should the party exercise his constitutional travel rights at some later date.

c. The right to protection of a protected special appearance, without suffering a major taking and destruction of important personal and property rights, in violation of state and federal law.

d. The right to protection against illegal intrusion into the private lives of citizens by California state court judges, acting without personal

jurisdiction, without the statutory requirements for subject matter jurisdiction.

e. The right to protection against state court judges knowingly acting without personal jurisdiction, without the statutory requirements for subject matter jurisdiction, while a citizen is in a protected special appearance status, and in gross violations of state, federal and constitutional law.

f. The intentional infliction of major, irreparable harm, upon a targeted citizen of the United States, by the illegal and unconstitutional misuse of the state judicial system, in a seemingly planned vendetta.

Cases that sustain the jurisdiction of this Court include:

Cohen v. California (1971) 91 S.Ct.

1780, 403 US 15, 29 L.Ed2d 284, rehearing denied 92 S.Ct. 26, 404 US 876, 30 L.Ed.2d 124.

Sherrer v. Sherrer (1948) 334 US 343.

Coe v. Coe (1948) 334 US 378.

Vanderbilt v. Vanderbilt (1957) 354 US 416.

Huffman v. Pursue, Ltd. (1975) 95 S.Ct. 1200, 420 US 592, 43 L.Ed.2d 482.

Charleston Federal Savings and Loan Association v. Anderson (1945) 65 S.Ct. 621, 324 US 182, 89 L.Ed. 857, rehearing denied.

ARGUMENT

I. THE CONSTITUTION, FEDERAL AND CALIFORNIA LAW, REQUIRES THAT A GENERAL APPEARANCE BE MADE BEFORE A CALIFORNIA STATE COURT ACQUIRES

PERSONAL JURISDICTION TO RENDER ORDERS TAKING PERSONAL AND PROPERTY RIGHTS.

The protection of a protected special appearance is provided by California Civil Code section 4356, California Rule of Court 1232, which protects appellant or any other citizen against being subjected to a relitigation trial, or to orders taking their personal and property rights.

Appellant filed a Motion to Quash on February 18, 1983, and a final decision had not been rendered when this jurisdictional statement was first filed on December 22, 1986.

II. THE CALIFORNIA COURTS ARE UNCONSTITUTIONALLY REFUSING TO RECOGNIZE THE 1966 DIVORCE JUDGMENT, AND THE JUDICIAL REGISTRATION OF THAT JUDGMENT IN

SISTER STATES.

California Civil Code section 4554 provides that a prior divorce judgment shall be conclusive of the rights and obligations of the parties, which is extended to foreign state and foreign country judgments by other statutory law. [11]

The California courts are unconstitutionally denying the protection of this law to appellant, and unconstitutionally threatening all residents of the United States with the voiding of long accepted civil and constitutional rights.

The sole basis upon which the California courts refuse to recognize the

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[11] California Code of Civil Procedure §§ 1908, 1913, 1915 (effective when the 1966 divorce judgment was rendered and for nine years thereafter), 1713.1, 1713.3, 1713.5, 1697-1699; California Civil Code §§ 5162, 5164, 5172.

1966 judgment is itself illegal and unconstitutional, as held by a long line of decisions of the United States Supreme Court and their progeny. Dictating to courts foreign to California, and to residents of such foreign courts, the California courts held that they would not recognize the judgments rendered by courts foreign to California if those courts did not require, did not determine, and the residents of such jurisdictions had not acquired domicile status.

The United States Supreme Court specifically prohibited as illegal and unconstitutional the raising of the very same argument that the California courts have used to devastate appellant's personal and property rights for three

years.[12]

III. CALIFORNIA'S CONSTRUCTION OF STATE LAW VIOLATES MAJOR SUBSTANTIVE AND PROCEDURAL RIGHTS OF DIVORCED PERSONS EXERCISING THEIR CONSTITUTIONAL TRAVEL RIGHTS.

Appellant's personal and property rights had been recognized under federal law,[13] under law of prior states and jurisdictions of residence, [14] For 20

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[12] Sherrer v. Sherrer (1948) 334 US 343; Coe v. Coe (1948) 334 US 378; Vanderbilt v. Vanderbilt (1957) 354 US 416; Estin v. Estin (1948) 334 US 541; Rediker v. Rediker (1950) 35 Cal.2d 796; Spellens v. Spellens (1957) 498 C.2d 210.

[13] Sherrer v. Sherrer (1948) 334 US 343; Coe v. Coe (1948) 334 US 378; Vanderbilt v. Vanderbilt (1957) 354 US 416; Perrin v. Perrin, 408 F.2d 107 (3rd Cir. 1969).

[14] Rosenstiel v. Rosenstiel (1965) 262 N.Y.S. 86; Rediker v. Rediker (1950) 35 Cal.2d 796; Spellens v. Spellens (1957) 498 C.2d 210; Scott v. Scott

years appellant had been recognized as divorced, and his personal and property rights secure, under law.

The right to travel from state to state, without suffering a taking of personal and property rights, has been upheld by decisions of this Court. In Shapiro v. Thompson (1969), Justice Harlan observed:

> Opinions of the Court and of individual Justices have suggested four provisions of the Constitution as possible sources of a aright to travel enforceable against the federal or state governments: the Commerce Clause; the Privileges and Immunities Clause of Art. IV. § 2; the Privileges and Immunities Clause of the Fourteenth Amendment; and the Due Process Clause of the Fifth Amendment.

Justice Harlan concluded that "the right to travel interstate is a 'fundamental' right which, for present

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(1958) 51 C.2d 249; Whealton v. Whealton (1967) 67 C.2d 656.

purposes, should be regarded as having its source in [the fifth amendment due process clause]."

Justice Brennan stated in Shapiro v. Thompson:

> This Court long ago recognized that the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the land ... uninhibited [by] regulations which unreasonably burden or restrict his movement. [This constitutional right] occupies a position fundamental to the concept of our Federal Union.

In United States v. Guest (1966) 383 US 745, Justice Stewart stressed that the constitutional right to travel interstate "is not a mere conditional liberty subject to regulation and control under conventional due process or equal protection standards." Rather, "[L]ike the right of association, ... it is a virtually unconditional right," subject

to strict scrutiny protection.

Other sources for the constitutional right to travel are the equal protection clause, the "penumbra" of the first amendment, the Ninth Amendment and " the nature of the federal union." See generally Lupu, Untangling the Strands of the Fourteenth Amendment, 77 Mich.L.Rev;.

The dictum in Kent v. Dulles (1958) 357 U.S. 116, stated, "The right to travel is a part of the 'liberty' of which the citizen cannot be deprived without the due process of law under the Fifth Amendment." Justice Douglas added that "the right to move freely from State to State is a privilege and immunity of national citizenship."

(See Ely, Democracy and District 177 (1980). See Right to Travel, Sec. 3, Constitutional Law, 5th Ed; Cases--

Comments Questions, American Casebook Series. The right permits the choosing of values, of existing and relocating in a community whose values he or she finds more compatible.

IV. California's Resurrection of the Absence of Domicile Invalidating Argument Was Outlawed as Unconstitutional By This Court Forty Years Ago.

The California courts argue that appellant had not acquired domicile status during his 1965-1966 residence in the initial divorce court forum, and therefore that court lacked personal jurisdiction to render the 1966 judgment. Impliedly, that 1966 court, and all other courts in the United States and in foreign countries, that did not require a domicile determination would be

recognized by California courts, although California statutory law, conforming decisional law, and federal law, made such recognition mandatory. No known court practice or law makes a determination, or the acquisition, of domicile a requirement for personal jurisdiction.

The published decision absurdly and arrogantly, as well as unconstitutionally, denies to residents of jurisdictions foreign to California the certainty that the prior divorce judgment, and their legally determined personal and property rights, will be recognized by California courts that openly approve literal judicial anarchy.

The May 10, 1983 decision and order of the California trial court, upheld in the published decision, denied appellant the

personal and property rights legally recognized for the past 20 years, on the same illegal and unconstitutional argument of domicile that this Court, the California Supreme Court, and California statutory law, held as unconstitutional, for the past 40 years.

V. THE PUBLISHED DECISION IS RIDDLED WITH PRIMA FACIE VIOLATIONS OF MAJOR AND FUNDAMENTAL CONSTITUTIONAL RIGHTS AND UNCONSTITUTIONAL INTERPRETATIONS AND APPLICATION OF STATE LAW.

The published decision stated holdings that on their face emasculates and literally replaces rights established under the United States Constitution and federal decisional law.

These violations include:

a. Voiding the protection of a

protected special appearance by an unconstitutional interpretation of California law.[15]

b. Elimination of the requirement for personal and subject matter jurisdiction.

c. Resurrection of the illegal and unconstitutional domicile invalidating argument.

d. Imposition of severe financial sanctions for the exercising of procedural due process rights when major violations of substantive law, and procedural law, are inflicted upon a citizen of the United States.

e. Held that if the former wife was "distraught" in the divorce proceedings 21 years ago it raises the question that the prior court lacked personal

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[15] California Civil Code § 4356, California Code of Civil Procedure § 418.10.

jurisdiction, and California courts would relitigate the divorce, with division of property rights as of 1986 rather than 1966. There is no support for such "Tooney-Ville" logic or law anywhere.

f. Held that if the prior court did not order appellant to pay appellee Emma Stich spousal support, this matter could now be litigated by California courts. This absurdity unconstitutionally interprets common law doctrines, decisional law, and statutory law, including California Civil Code section 4554.

g. Held that the decision of the 1966 divorce court, that there was no community property, would be relitigated, as appellant had property in California (in title as his separate property, in which appellee Emma Stich quit-claimed

her interest years earlier).

VI. EXERCISE OF CONSTITUTIONAL DUE PROCESS APPELLATE REMEDIES, FOLLOWING MASSIVE ILLEGAL TAKINGS OF PERSONAL AND PROPERTY RIGHTS, ARE NOT CONSIDERED FRIVOLOUS ACTS IN A FREE SOCIETY.

The absurdity and the unconstitutional interpretation and application of state law, that fails to recognize the legal protection of a protected special appearance, the absence of personal jurisdiction, the requirement for subject matter jurisdiction, the protection of state and federal judgment recognition law and law prohibiting collateral attacks or relitigation, is shown by several classic and revealing holdings in the published decision:

California courts have jurisdiction to issue temporary orders pending the adjudication of the validity of the foreign decree. The issuance of such an order is not an abuse of discretion if the court determines there is a reasonable probability of success in establishing the invalidity of the foreign decree and the proceeding has been instituted in good faith.

An award of temporary spousal support is within the sole discretion of the trial court

It is clear that the evidence need not be as complete and satisfactory as at the time of trial. When, as here, a valid marriage is admitted and the issue is the validity of a foreign divorce decree, it appears that the trial court has a larger measure of discretion to grant the application then when the fact of the marriage itself is in issue.

Statutory authority for subject matter jurisdiction to render the orders for temporary spousal support, attorney fees and costs exists only if there is a marriage and an absence of a prior divorce judgment (which under law is protected against relitigation and

collateral attacks). These holdings totally deprives appellant of the protection of a protected special appearance, protection against violation of state and federal substantive and procedural law, protection against being subjected to a impermissible relitigation and against orders rendered by a state court judge lacking personal jurisdiction--and knowing he lacks such jurisdiction.

The California trial court refused appellant's request to introduce testimony and other evidence into the February 25, 1983 hearing on the motion to quash and concurrent Order to Show Cause for appellant to pay temporary spousal support, attorney fees and costs, limiting the hearing solely to the OSC, even though appellant had not made a

general appearance.

In an unconstitutional interpretation and application of California Code of Civil Procedure section 907 relevant to ordering financial sanctions for a frivolous appeal, the published decision sought to further deprive and further harm appellant. Incredibly and arrogantly, the published decision held that appellant (and impliedly any other divorced person), who does not immediately abandon all procedural and substantive due process rights, upon being served with an illegal and impermissible attack and relitigation of his legally adjudicated personal and property rights, must be punished, and an example made of the person.

Exceeding any violations of human rights appellant had witnessed while a

resident of various Middle East countries, including Iran (as seen during a revolution), the published decision held:

> If he had, and had successfully established the validity of the [1966] divorce, his obligation to pay temporary support would have been limited to no more than a couple of months. Instead, because of his repeated motions before the trial court, and his appeal, he now owes support which has accrued over the past two and a half years.
>
> The protracted length of this litigation, the effect that it has had on Emma including the extremely high legal costs she has been required to incur, as well as the undue burden it has imposed on the legal system by the undue consumption of valuable judicial time, when considered with the need to deter this kind of conduct in the future, all justify the imposition of a substantial sanction as a penalty against Rodney.
>
> Considering these factors, we find that $10,000 is an appropriate amount to impose as a sanction against Rodney for his egregious conduct herein.

What constituted "egregious conduct"?

a. Appellant's filing of a motion to

quash, as provided by California Rule of Court 1230 and California Code of Civil Procedure section 418.10, when there is a prior divorce judgment, that is protected against relitigation; protected against collateral attacks; protected against the absence of domicile argument that was the gravamen of appellee Emma Stich's attack and the California trial court's refusal to dismiss the "divorce" action (among other errors).

b. Appellant's filing of a petition for writ of prohibition, as provided by California Code of Civil Procedure section 418.10, when the divorce action was refused dismissal following the motion to quash.

c. Filing of appeals of the two orders that he pay temporary spousal support, attorney fees, and costs, that were

rendered while appellant was in a protected special appearance status; while the California court lacked personal jurisdiction over appellant; while the statutory requirements of absence of a marriage were missing and thus the court lacked subject matter jurisdiction; and other errors.

The published decision continued:

> The orders of the trial court are affirmed. In addition, sanctions are imposed against Rodney for pursuing an appeal for the purpose of delay in the amount of $10,000 to be paid to Emma. Rodney shall also bear the costs of appeal, including attorney fees, to be determined by the trial court. [plus temporary spousal support for approximately three years and more, during the period when appellant was in a protected special appearance status, and the California court lacked personal and subject matter jurisdiction.

The published decision fabricated facts out of whole cloth that had never

BEST AVAIL

been subjected to an evidentiary hearing; misstated the nature of the gratuitous money that appellant had been making to appellee Emma Stich since the child support payments were no longer necessary after 1971, and fabricated facts that had never even been heard uttered in the fertile imagination of opposing legal counsel. The intent to destroy appellant financially was obvious.

CONCLUSION

For the foregoing reasons, appellant respectfully submits that this Court has jurisdiction over this appeal under section 1257 (2), Title 28, United States Code, and that this appeal brings before the Court substantial and important federal questions which require plenary consideration, with briefs on the merits and oral argument, for their resolution.

ABLE COPY

Because of numerous highly suspicious aspects in the underlying state court proceedings, as well as in federal court, appellant makes brief reference to a very serious matter that he strongly believes are interrelated. The attacks upon appellant's financial assets commenced shortly after the last of appellant's mandamus actions were filed in the United States District Court at San Francisco and dismissed by the Ninth Circuit Court of Appeals in violation of federal due process rights.

Appellant had identified as a government air safety investigator serious misconduct by the Federal Aviation Administration, the National Transportation Safety Board, and at United Airlines, related to several major airline crashes. Appellant exercised his

duty seeking to expose the crash-related misconduct, and filed actions in the federal courts, stating facts raising federal questions and invoking federal court jurisdiction. A strong government block intervened at every stage of appellant's exposure attempts, which effectively protected those responsible for the criminal and fraudulent actions.

Apparently to destroy appellant's costly exposure attempts, which including published books and nearly 1000 radio and television guest appearances, the 1982 dismissal of appellant's latest mandamus action was followed by the filing of a divorce action by the San Francisco law firm of Friedman, Sloan and Ross. The action was obviously prohibited by state and federal law, which clearly established the absence of any marriage,

as appellee Emma Stich herself declared in numerous declarations before and after that 1982 filing of the divorce action.

The appearance of the same government block that appellant describes in his two books, The Unfriendly Skies, an Aviation Watergate, have become evident from the consolidation of the conduct in state and federal courts.

This Court should as a matter of law, and based upon the apparent relationship of this action to the earlier crash-related government misconduct which appellant sought unsuccessfully to expose, approve the acceptance of this Jurisdiction Statement.

Dated: August 10, 1986.

Respectfully submitted,

Rodney F. Stich
Appellant in pro se

No. A-313

IN THE SUPREME COURT

OF THE

UNITED STATES

October Term, 1985

RODNEY F. STICH

Appellant

vs.

SUPERIOR COURT OF THE STATE OF
CALIFORNIA
COUNTY OF SOLANO;
URT OF APPEAL, STATE OF CALIFORNIA,
FIRST APPELLATE DISTRICT;
EMMA W. STICH,

Appellees.

---

n Appeal from the Court of Appeal
of the State of California

APPELLANT'S APPENDICES

Rodney F. Stich
Post Office Box 11455
Reno, Nevada 89510
Telephone: (702) 826-1185
Appellant in pro se

THE COURT OF APPEAL

OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

IN RE THE MARRIAGE OF

RODNEY AND EMMA W. STICH

RODNEY F. STICH,

Appellant, A023126

v. Solano County Superior Ct.

EMMA W. STICH, 83472

Respondent.

In this case we hold that where the subject matter jurisdiction of a California court is challenged in a marital dissolution action based upon the existence of a prior decree of divorce

(appendix "A")

issued by another jurisdiction, the validity of which is in dispute, California courts have jurisdiction to issue temporary orders pending the adjudication of the validity of the foreign decree. The issuance of such an order is not an abuse of discretion if the court determines there is a reasonable probability of success in establishing the invalidity of the foreign decree and the proceeding has been instituted in good faith. We also hold that the appellant has appealed solely for purposes of delay and impose sanctions against him and in favor of respondent in the sum of $10,000.

Rodney F. Stich appeals from orders by the trial court that he pay temporary spousal support of $400 per month to Emma W. Stich and attorney fees of $2,500 to

prosecute the action. He claims the trial court erroneously refused to recognize the validity of a 1966 Mexican dissolution proceeding and dismiss Emma's California action. Thus, he concludes the trial court lacked subject matter jurisdiction to make any order except one dismissing the action. His claims are absolutely without merit.

I. FACTS

Emma and Rodney were married September 5, 1943, in Texas. They had four children, now adults. From 1950 until 1962, the Stiches lived in California where they acquired a substantial amount of real property. In 1962, they moved to Colorado. In 1964 or 1965, the Stiches separated and Rodney moved to Oklahoma.

Rodney states that in 1964 and 1965, he visited Mexico and came to the

decision to "establish a permanent residence there." He rented an apartment in Juarez, Mexico in December 1965 and promptly hired an attorney and filed for a divorce.

Emma states that she received the divorce papers by mail in Texas. Included was a power of attorney form. Rodney reportedly called Emma's sister and asked her to pressure Emma to sign the papers. Because she was distraught and under pressure from Rodney through her sister, Emma signed the papers. The Mexican court issued the divorce decree on January 31, 1966, no more than 60 days after Rodney rented the apartment in Mexico.

Rodney did not rent or otherwise relinquish his residence in Oklahoma during his sojourn in Mexico. Additionally, he did not obtain a job

while in Mexico. He returned to Oklahoma in February 1966, immediately after he obtained the divorce. The divorce judgment stated there was no community property, and made no provision for spousal or child support. Rodney has lived in California from 19867 through the present.

Rodney sent Emma $300 a month from early 1966 until 1982. When he discovered that she had contacted a lawyer regarding the status of the marriage, he sent her a letter threatening that unless she cancelled the action for dissolution, he would never again make any payment to her, would stop paying her health insurance, and would remove her from his will. He stopped the payments as threatened.

II. TRIAL COURT PROCEEDINGS.

In December 1982 Emma filed a petition for dissolution of marriage in California requesting spousal support and a determination of property rights. She also set a hearing on her request for temporary spousal support and attorney fees.

A few days prior to the hearing Rodney filed a motion to quash service on the ground a valid Mexican divorce decree has previously been entered and therefore no marriage existed. The spousal support and attorney fees, and the court hearing was held on Emma's request for temporary spousal support and attorney fees, and the court took under submission Rodney's motion to quash, while allowing both parties further briefing on that issue.

On May 10, 1983, after argument and briefing by the parties the court

deferred action on the motion to quash until a trial could be conducted on the issue of the validity of the Mexican divorce, and granted Emma's motion for temporary spousal support and attorney fees. The court declared: "It appears that the primary question before the court is whether or not there is a sufficient showing that [Emma] might prevail in her challenge to the Mexican dissolution obtained by [Rodney] some 17 years ago. The challenge is based upon lack of jurisdiction of that Court, which in turn, is based upon lack of domicile of one or both parties in that jurisdiction. There is a sufficient showing when the evidence and law indicate a fair or reasonable probability of success at the trial. If that showing is made, temporary support and fees can

be awarded. After a careful review of the evidence and law the Court is convinced that the test has been met. [Rodney] obviously went to Mexico for the dissolution. He barely met the time requirements and returned to the United States immediately upon receipt of his decree. [Emma's] appearance was by power of attorney." The court rejected Rodney's arguments that Emma was barred by equitable theories from challenging the validity of the divorce by stating, "The equitable position of the parties then and thereafter cast doubt upon the theory of estoppel." Rodney appealed and posted an appeal bond. Consequently, Emma has never received the temporary support or attorney fees ordered. Thereafter, Emma sought and received an order for attorney fees pending appeal. Rodney filed an

undertaking to stay that order as well.

III. JURISDICTION TO ISSUE PENDENTE LITE ORDER

The central issue on appeal is whether the trial court exceeded its jurisdiction in awarding temporary spousal support and attorney fees.[1] Rodney contends the trial court had no jurisdiction to make any order because of the Mexican divorce. Emma contends the trial court had jurisdiction to make temporary orders until a determination of the validity of the Mexican divorce can be made.

Civil Code sections 4357 and 4370 allow the trial court to award temporary

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[1] In Rodney's closing brief, filed in propria persona, he attempts to raise a number of additional issues on appeal. Some of these issues may not be properly considered on this appeal by this court because they relate to Rodney's federal court action or are based on orders from which no appeal has been taken.

spousal support and attorney fees as necessary during the pendency of certain family law proceedings.[2] Thus, an order of temporary spousal support is within the sole discretion of the trial court. (Machado v. Machado (1962) 201 Cal.App.2d 154, 156) Similarly, the award of attorney fees, upon a showing of need and

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[2] Civil Code section 4357 provides in part, "During the pendency of any proceeding ... [for dissolution of marriage] the superior court may order the husband or wife ... to pay any amount that is necessary for the support and maintenance of the wife or husband ..."

Civil Code section 4370, subdivision (a) provides in part: "During the pendency of any proceeding under this part, the court may order any part ... to pay such amount as may be reasonably necessary for the cost of maintaining or defending the proceeding and for attorneys' fees; and from time to time and before entry of judgment, the court may augment or modify the original award for costs and attorneys' fees as may be reasonably necessary for the prosecution or defense of the proceeding or any proceeding related thereto, including after any appeal has been concluded."

an ability to pay, is within the discretion of the trial court. Neither award will be disturbed on appeal absent a showing of abuse of discretion. (In re Marriage of Jacobs (1982) 128 Cal.App.3d 273, 288-289; In re Marriage of Aufmuth (1979) 89 Cal.App.3d 446, 465-466, disapproved on other grounds by In re Marriage of Lucas (1980) 27 Cal.3d 808, 815.)

Additionally, for either award to be upheld, there must be sufficient evidence of a marriage. (Gromeeko v. Gromeeko (1952) 110 Cal.App.2d 117, 123.) While the Gromeeko court declined to state a precise standard for the amount of proof of the existence of a marriage required to justify the award of temporary spousal support and attorney fees, the court concluded, "It is clear that the evidence

need not be as complete and satisfactory as at the time of trial. When, as here, a valid marriage is admitted and the issue is the validity of a foreign divorce decree, it appears that the trial court has a larger measure of discretion to grant the application than when the fact of the marriage itself is in issue." (Id, at p. 127; See also Dietrich v. Dietrich (1953) 41 Cal.2d 497, 504, cert. den. (1954) 346 U.S. 938.) However, even if the Mexican divorce is ultimately found to be valid, Emma could be awarded attorney fees necessary to allow her to pursue an action for support and division of community property, issues not adjudicated in the Mexican proceedings. (In re Marriage of Leff (1972) 25 Cal.App.3d 630, 647-648.)

Here, as in Gromeeko v. Gromeeko a

valid marriage is admitted; the issue is the validity of a foreign divorce decree. The trial court made a factual finding that Emma had demonstrated a fair or reasonable probability that she would be successful in establishing the invalidity of the Mexican divorce. We cannot disturb this finding since it is clearly supported by substantial evidence. (Jessup Farms v. Baldwin (1983) 33 Cal.3d 639, 660; Crawford v. Southern Pacific Co (1935) 3 Cal.2d 427, 429.)

The evidence includes several possible grounds for successful challenge of the validity of the divorce. Rodney acknowledges that Emma's "appearance" in the Mexican proceedings was by power of attorney. She claims that she signed "divorce papers" under pressure and at a time when she was distraught. This raised

the possibility of undue influence or duress and brings into question the validity of the Mexican court's jurisdiction over her.

Rodney also contends that prior to the divorce Emma voluntarily quitclaims in favor of him on numerous parcels of real property. She states that she does not remember signing any deeds, or even knowing what a "quitclaim" was. This suggests that an issue at trial will be whether the deeds were obtained during the marriage by fraud or undue influence. (Boeseke v. Boeseke 255 Cal.App.2d 848, 852; Civil Code sections 158 (repealed, now 5103), 2228, 2235.)[3] Rodney admitted

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[3]Civil Code section 158 (repealed by statute in 1969) states: "Either husband or wife may enter into any engagement or transaction with the other, or with any other person, respecting property, which either might if unmarried; subject, in transactions between themselves, to the

he rented an apartment in Mexico no more than two months before the Mexican court issued the divorce decree, and that he moved back to his Oklahoma residence the month after. At the time of the Mexican proceeding she held substantial real property in California. In spite of these holdings, however, the Mexican decree stated there was no community property and made no provision for child or spousal support. Public policy may not permit recognition of a foreign divorce decree if the divorce was obtained in a foreign country in order to evade the laws of this state. (Scott v. Scott

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generally rules which control the actions of persons occupying the confidential relations with each other, as defined by the title on trusts." (Emphasis added.)

New Civil Code section 5103 does not significantly alter the language of the last half of old section 158.

(1958) 51 Cal.2d 249, 256.) Thus, there is substantial evidence to support the trial court's finding that it was reasonably probable that Emma would succeed in challenging the validity of the Mexican divorce at trial.

Rodney also asserts that the trial court lacked jurisdiction to award temporary support and attorney fees, because of its failure to hear argument and evidence on the motion to quash during the hearing on support and fees. This is not true. A trial court may properly limit the testimony and argument to the issues of temporary spousal support and attorney fees, and reserve the taking of evidence on one issue about which there is substantial factual dispute, such as the validity of a Mexican divorce, until a trial of that

issue can be conducted. Additionally, Rodney served Emma's counsel with his motion to quash only a few days prior to the hearing already scheduled on the order to show cause for attorney fees and temporary spousal support. The trial court noted that Emma's counsel had not had sufficient time to respond to the motion to quash. Also, Emma had come from Texas for the purpose of testifying on the issue of support and fees, and it would have been a considerable hardship on her to continue the order to show cause and require her to return again, after the continuance, to testify on those same issues. Thus, in order to allow Emma to return to Texas after the hearing and to give Emma's counsel sufficient time to respond to Rodney's arguments, the court decided to take the

motion to quash under submission, and receive further briefing from the parties.

Thereafter the trial court determined it could not rule on the motion to quash without holding an evidentiary hearing. Contrary to Rodney's assertions the trial court did not imply that it would reach a decision on the jurisdiction question only after a trial of the entire case. The question of jurisdiction in this case involves significant factual questions requiring a length evidentiary hearing. Due to this it is reasonable to conclude that resolution of the issue would not be appropriate on a busy domestic relations motion calendar. An early bifurcated trial would be the appropriate way to resolve this issue first, while providing a complete opportunity for each side to

fully present its evidence and arguments. In fact, on a later appearance, after Rodney had made one of his numerous changes of attorneys and was again representing himself, he stated to the court that he was going to file a motion to bifurcate and separately try the issue of the validity of the Mexican divorce.[4] He never did. If he had done so, and had successfully established the validity of the Mexican divorce, his obligations to pay temporary support would have been limited to no more than a couple of months. Instead, because of his repeated

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[4] "THE COURT: ... I would suggest to you, Mr. Stitch, that you pursue the trial [on the issue of the validity of the Mexican divorce] as diligently as you possibly can; because if you are there successful [sic], you will have thereby minimized your exposure to interim support. ... MR. STITCH: Well, I intend to file a motion for bifurcation shortly ... "

motions before the trial court and his appeal, he now owes support which has accrued over the past t6wo and a half years.

Rodney's claim that he has suffered "great irreparable harm," which can never be compensated by any subsequent acts of the court, is completely without merit. He paid Emma monthly support from 1966 until October 1982 in the absence of any court order. He has ceased to do so. He posted appeal bonds to stay execution of the order of the trial court for temporary support and fees and for attorney fees on appeal. The record does demonstrate irreparable harm. However, as we shall discuss in our imposition of sanctions against Rodney, the irreparable harm has been done to Emma, her attorneys, and to the legal system which

Rodney has taken every opportunity to manipulate for harassment and delay.

Emma has met all other requirements for an award of temporary spousal support and attorney fees. She demonstrated her need and Rodney's ability to pay. Her total income in early 1983 was $263 per month, and her total expenses were $892 per month. At the time of the hearing Rodney admitted to owning property worth at least $5 million dollars upon which no more than $1 1/2 million dollars was owed.[5]

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[5] Rodney claimed that in spite of the value of his property he could not afford to pay either temporary support or attorney fees. As evidence of this he supplied a profit/loss statement prepared by himself, not by an accountant, which showed that he had a $117,292 per year "negative cash flow." Even if the information contained in the profit/loss statement was correct, "a past or present cash deficit does not control on the question of ability to pay ... ... If necessary the husband must invade his

Based upon these facts the court reasonably concluded that Emma needed temporary spousal support, and that Rodney was able to pay it, as he had for the 17 years prior to October 1982, and attorney fees.

It was already within the discretion of the trial court to award temporary support and attorney fees, and Rodney has failed to show any abuse of discretion.

IV. IMPOSITION OF SANCTIONS

Upon an examination of the record, including taking judicial notice of federal court proceedings, we issued, on our own motion, an order to Rodney to show cause why sanctions should not be imposed against him for pursuing a

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investments to provide the wife with the sinews to conduct her litigation with him." (Rosenthal v. Rosenthal (1961) 197 Cal.App.2d 289, 297-298.)

frivolous appeal, or one for the purpose of delay. Rodney appeared and argued against the imposition of sanctions.

We previously made mention of Rodney's letter to Emma threatening to never make any further payments to her unless she cancelled the dissolution action. It is clear to us that Rodney has manipulated the judicial system, including its appellate process, to carry out this threat. Emma's order to show cause was filed in December 1982. To this date, by virtue of undertakings filed by Rodney, Emma has received no spousal support. For the same reason she has received no payment of attorney fees with which to prosecute the action in the trial court or to defend against the appeal. The record shows her only income at the time of the order to show cause was $263 per

month and her counsel informs us she has since been relegated to taking in laundry to supplement her income.

A review of Rodney's actions shows that he has literally and figuratively attempted to "make a federal case" out of this dissolution action. Further, he has apparently adopted as his legal maxim in this case a famed statesman's ringing pronouncement, "Millions for defense, but not one cent for tribute." In December 1983 Rodney was first served with the petition for dissolution and the order to show cause, and he employed a lawyer to file responsive pleadings. This was the first of four lawyers he has had in these proceedings, all of whom he has terminated after relatively brief representation.

Before the originally scheduled

hearing on the order to show cause had taken place, Rodney terminated his first lawyer. He employed a second attorney who promptly obtained a continuance of the order to show cause and filed a batter of declarations and motions with the court in addition to the motion to quash, including a demurrer to the petition for dissolution, a pleading which is not authorized under the Family Law Act. After the order to show cause hearing, but prior to receipt of the ruling thereon, Rodney promptly terminated his second lawyer and hired a third lawyer who also filed additional declarations and motions which Emma's counsel had to answer. After the trial court issued the order resulting from the order to show cause hearing which is the subject of this appeal, Rodney immediately

terminated his third lawyer.

Having gone through three lawyers faster than a famous major league baseball owner goes through managers, Rodney apparently concluded there was only one person capable enough to represent him--himself. Rodney then filed a battery of new motions in propria persona including a "motion for new trial" on the pendente lite order for temporary support and attorney fees, and a request for a statement of decision thereon pursuant to Code of Civil Procedure section 632. Both requests for a statement of decision and motions for a new trial are appropriate only after the determination of a factual issue. (See Code Civ. Proc., §§ 632, 656.) In this case, despite Rodney's attempt to posture his motions as an attack on the factual

determinations leading to the award of temporary support and attorney fees, a reading of his documents makes it clear they are based solely on an issue of law, his ongoing contention that the trial court lacked jurisdiction to make any order because of the existence of the Mexican divorce. Certainly the decision of the trial court to defer ruling on the validity of the Mexican divorce until an evidentiary hearing could take place was correct, given the irreconcilable factual conflicts in the declarations submitted in support of and in opposition to Rodney's motion to quash. A decision to defer a determination on an issue pending an evidentiary hearing cannot in any sense be considered to constitute a trial on the issue so as to justify a request for a statement of decision or the filing

of a motion for a new trial.[6]

When Rodney's request were properly denied, being unable to fire his lawyer, he did the next best thing: he attempted to fire the judge. He immediately moved under Code of Civil Procedure section 170.6 to disqualify the judge who had conducted all of the proceedings to date. Although this motion was filed too late,

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[6] The answer to Rodney's claim of entitlement to a statement of decision is that even if he were entitled to request one, his request was untimely. The hearing involved less than one day. Thus, pursuant to Code of Civil Procedure section 632, a request for a statement of decision had to be made before the court took the matter under submission at the conclusion of the hearing. Rodney's request was not made until several days later. Similarly, the short answer demonstrating the inappropriateness of his filing of a motion for a new trial is that, "A new trial is a reexamination of an issue of fact in the same court after a trial .... " (Code Civ. Proc. § 656.) Here, there had not yet been a trial on the issue of the validity of the Mexican divorce.

the trial judge agreed to recuse himself from this case, undoubtedly realizing his time could be more productively spent on other cases. Rodney thereafter filed a motion for reconsideration of his previous motions. These were denied by a different judge, who advised Rodney that his motions bordered on the frivolous. Rodney, who one might suspect had already terminated lawyers who dared to charge him for such advice, would not accept it gratuitously. He again, too late, moved to disqualify that judge. The second judge, undoubtedly aware of what his colleague had gone through over the previous seven months, also agreed to recuse himself.

Rodney, contrary to his previously expressed intention to file a motion for bifurcation to try the issue of the

validity of the Mexican decree at an early trial, and having run out of lawyers and trial judges to terminate, turned his attention to the appellate courts. Still representing himself, he filed a petition for a writ seeking to overturn the pendente lite order. The writ was summarily denied by this court and his petition to the Supreme Court for a hearing on the writ was also denied.

Thereafter Rodney filed a notice of appeal in propria persona. In fact, apparently not wanting to leave any stone unturned in getting to the appellate court, he filed two notices of appeal from the pendente lite order. In addition, he filed another petition for a writ which was denied; his petition to the Supreme Court for a hearing on this writ resulted in that court's unanimous

denial of a hearing.

Having become disenchanted with the state courts, Rodney did in fact attempt to "make a federal case" out of this dissolution action. He filed a civil rights action in the United States District Court for the Eastern District of California suing Emma, the Superior Court of Solano County, and the two trial judges of that court who had conducted hearings and ultimately recused themselves. Within six months, Rodney reluctantly redirected his attention to the California appellate courts when his federal court action was dismissed on the grounds that his complaint was wholly insubstantial and frivolous.[7]

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[7] Rodney employed a fourth attorney to draft and submit his appellant's opening brief in this appeal. The record does not disclose when Rodney terminated his fourth attorney, however, he filed

Code of Civil Procedure section 907 provides: "When it appears to the reviewing court that the appeal was frivolous or taken solely for delay, it may add to the cost on appeal such damages as may be just." A similar provision appears in California Rules of Court, rule 26(a). Although it seems clear to us that Rodney's appeal is just as frivolous as his federal court action was, we find it necessary to make that determination since we hold that sanctions should be imposed upon him on

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his own appellant's reply brief in propria personal less than four months after the filing of appellant's opening brief by his counsel. At oral argument on the order to show cause regarding sanctions Rodney informed us that each of his attorneys had been terminated because they were inept and incompetent. Except for their judgment in accepting Rodney as a client in the first place, we have seen nothing to cause us to accept Rodney's assessment.

the basis of pursuing an appeal solely for the purpose of delay. Every action taken by him has been to delay as long as possible any requirement that he make any payment to Emma for her support or for attorney fees to prosecute this action. (See Hersch v. 'citizens Savings & Loan Assn. (1983) 146 Cal.App.3d 1002, 1012; Comora v. Comprehensive Cars Corp. (1983) 140 Cal.App.3d 369, 377; People v. Beverly Bail Bonds (1982) 134 Cal.App.3d 906, 914.) His motive clearly is to carry out his original threat never to pay Emma anything if she proceeded with the dissolution action, or, alternatively, to financially coerce a settlement of her claim. We can't help but express admiration for the staying power of Emma's attorneys, who inform us that over 250 hours of attorney time has been

expanded in state court proceedings. This may well be a conservative estimate. However, unlike Rodney's attorneys and the trial judges, Rodney could not fire or disqualify them.

Rodney's claim of the validity of the Mexican divorce, as he acknowledged to the trial court, could have been quickly resolved in a bifurcated trial of that issue if he were truly interested in obtaining a rapid disposition. The protracted length of this litigation, the effect that it has had on Emma including the extremely high legal costs she has been required to incur, as well as the undue burden it has imposed on the legal system by the undue consumption of valuable judicial time, when considered with the need to deter this kind of conduct in the future, all justify the

imposition of a substantial sanction as a penalty against Rodney. (See Maple Properties v. Harris (1984) 158 Cal.App.3d 997, cert. den. (1985) 84 L.Ed.2d 820.)

In considering the appropriate amount of the sanction to be imposed, we have duly considered the fact that Emma, as a result of our affirmance of the lower court's order in this appeal, will be entitled to request attorney fees and costs upon the return of this case to the trial court. Additionally, she will be entitled to collect the support accrued under the pendente lite order, with interest to date. We have also duly considered the fact that Rodney acknowledged at the order to show cause hearing that he had a net worth of at least $3 1/2 million dollars. Considering

these factors, we find that $10,000 is an appropriate amount to impose as a sanction against Rodney for his egregious conduct herein.

The orders of the trial court are affirmed. In addition, sanctions are imposed against Rodney for pursuing an appeal for the purpose of delay in the amount of $10,000 to be paid to Emma. Rodney shall also bear the costs of appeal, including attorney fees, to be determined by the trial court.

_____
King, J.

We concur:

_____
Low, P.J.

_____
Haning, J.

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102

AUG 28 1985.

I have this day filed Order

REVIEW DENIED

In re: *No.* A023126

RODNEY F. STICH

DE.

EMMA W. STICH

Respectfully,

Clerk

APPENDIX "B"

IN THE SUPERIOR COURT OF THE

STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SOLANO

DEPARTMENT V

EMMA W. STICH,

Petitioner,

and

RODNEY F. STICH,

Respondent.

No. 83472

ORDER ON ORDER TO SHOW CAUSE AND MOTION TO QUASH

Hearing in the above-entitled matter regarding Order to Show Cause and Motion to Quash came regularly before the Court on February 25, 1983, Petitioner appearing with attorney Jeffery Ross and Respondent appearing with attorney William McPherson; evidence having been adduced. The Court has also read and considered the Supplemental Opening Brief filed by new counsel Maurice Moyal for Respondent and the Response thereto; and

the matter is submitted to the Court.

It appears that the primary question before the Court is whether or not there is a sufficient showing that Petitioner might prevail in her challenge to the Mexican dissolution obtained by Respondent some 17 years ago. The challenge is based upon lack of jurisdiction of that Court, which in turn, is based upon lack of domicile of one or both parties in that jurisdiction. There is a sufficient showing when the evidence and law indicate a fair or reasonable probability of success at the trial. If that showing is made, temporary support and fees can be awarded.

After a careful review of the evidence and law the Court is convinced that the test has been met. Respondent obviously went to Mexico for the dissolution. He

barely met the time requirements and returned to the United States immediately upon receipt of his decree. Petitioner's appearance was by power of attorney. The equitable position of the parties then and thereafter cast doubt upon the theory of estoppel.

THEREFORE, IT IS ORDERED, that Respondent pay to Petitioner as and for temporary spousal support the sum of $400.00 per month commencing with the month of January, 1983.

IT IS FURTHER ORDERED, that respondent pay to Petitioner's attorney as and for attorney's fees on account, the sum of $2,500.00.

Dated: May 9, 1983.

Dwight C. Ely
JUDGE OF THE SUPERIOR COURT

SELECTED CALIFORNIA STATUTORY LAW

§ 4356. Special appearance During Pendency of Motion.

> During the time a motion pursuant to Section 418.10 of the Code of Civil Procedure is pending, the respondent may appear in opposition to an order made during the pendency of proceedings under this part and the appearance shall not be deemed a general appearance by the respondent.
>
> (b) As used in this section, a motion pursuant to Section 418.10 of the Code of Civil Procedure is pending from the time notice of motion is served and filed until the time within which to petition for a writ of mandate has expired or, if a petition is made, until the time final judgment in the mandate proceeding is entered.

California Rule of Court 1230 provides that if there is a prior divorce judgment that the California court's personal jurisdiction over him can be challenged by filing a Motion to Quash.

California Code of Civil Procedure Code section 1908:

> The effect of a judgment or final order in an action or special proceeding before a court or judge of this state [is] ... conclusive between the parties.....

In 1966, when the prior divorce judgment was rendered, and for nine years thereafter, California Civil Code section 1915 was in effect. Section 1915:

> A final judgment of any tribunal of a foreign country having jurisdiction, according to the laws of such country, to pronounce the judgment, shall have the same effect as final judgments rendered in this state.

The registration of the 1966 divorce judgment by the Clerk, Second Civil Court, Washoe County, Nevada, added the additional protection of Code of Civil Procedure section 1913:

> The effect of a judicial record of a sister state is the same in this state as in the state where it was made, except that it can only be enforced here by an action or special proceeding ....

The recognition given to final divorce

judgments of the State of California is defined in California Civil Code section 4554:

> Section 4554. Effect of Final Judgment.
>
> Entry of the final judgment shall constitute a final adjudication of the rights and obligations of the parties with respect to the status of the marriage and property rights and shall constitute a waiver of their respective rights to spousal support, rights to appeal, and rights to move for a new trial.

California Code of Civil Procedure section 1713.3 provides:

> "A foreign judgment ... is conclusive between the parties ..."

Civil Code section 5164:

> A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a court of this state.

Another of California's omnibus international comity judgment recognition statutes, California Code of Civil Procedure section 1908, provides:

> The effect of a judgment or final order in an action or special proceeding before a court or judge of this state [is] ... conclusive between the parties.

California Evidence Code section 623.

Misleading Statement or Conduct.

> Whenever a party has, by his own statement or conduct, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, he is not, in any litigation arising out of such statement or conduct, permitted to contradict it.

Quasi estoppel is addressed in California decisional law. In In re Shank's Estate (1957) 154 Cal.App.2d 888:

> [O]ur courts have recognized another species of estoppel, called 'quasi-estoppel,' which is based upon the principle that one cannot blow hot and cold ....
> Defendant may serve and file notice of appeal to quash service of summons or to stay or dismiss action ... (1) ... on the ground of lack of jurisdiction of the court over him.

California Code of Civil Procedure section 418.10 (a)(1) provides automatic

personal jurisdiction over a party if the party fails to object to the court's personal jurisdiction.

California Rule of Court 1230. Motion to Quash Proceeding.

> (a) Within the time permitted to file a response, the respondent may move to quash the proceeding, in whole or in part, for any of the following:
> (2) That there is a prior judgment ... between the same parties for the same cause.

California Code of Civil Procedure § 430.80. Objections Waived by Failure to Object.

> (a) If the party against whom a complaint or cross-complaint has been filed fails to object to the pleading, either by demurrer or answer, that party is deemed to have waived the objection ....

California Code of Civil Procedure § 418.10. Defendant May Serve and File Notice of Motion to Quash Service of Summons or to Stay or Dismi8ss Actin--

Time Limit--Grounds--Conditions--Default.

(a) A defendant, on or before the last day of his time to plead or within such further time as the court may for good cause allow, may serve and file a notice of motion either or both.

(1) To quash service of summons on the ground of lack of jurisdiction of the court over him.

California Code of Civil Procedure section 430.80. Objections Waived by Failure to Object.

> (a) If the party against whom a complaint ... has been filed fails to object to the pleading, either by demurrer or answer, that party is deemed to have waived the objection unless it is an objection that the court has no jurisdiction of the subject of the cause of action alleged in the pleading ....

California courts exercise personal jurisdiction over parties that have no domicile intent, that have not willingly submitted to the court's jurisdiction, and who had objected strenuously to the forcing of personal jurisdiction upon them, such as in Kulko v. California Superior Court (1978) 436 U.S. 84.

RECOGNIZED BASES FOR PERSONAL JURISDICTION

California Code of Civil Procedure section 410.10 provides:

> A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.

California Code of Civil Procedure section 1713.5 provides that

> The foreign judgment shall not be refused recognition for lack of personal jurisdiction if (2) the defendant voluntarily appeared in the proceedings [as respondent Emma Stich had done] ...
>
> (3) The defendant prior to the commencement of the proceedings had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved. [as respondent Emma Stich had done.]

CONCLUSIVE PRESUMPTION THAT THE PRIOR COURT HAD PERSONAL JURISDICTION.

California Evidence Code section 666 provides that a foreign court is conclusively presumed to have had personal jurisdiction:

> [A]ny court of this state ... or ... any other nation ... is presumed to have acted in the lawful exercise of its jurisdiction ... when the act ...

is under collateral attack. [as is now occurring n the California courts.]

California Code of Civil Procedure section 1908 provides for conclusiveness of judgments between the parties:

> The effect of a judgment or final order in an action or special proceeding before a court or judge of this state [is] ... conclusive between the parties ....

State and federal doctrines of res judicata, issue and claim preclusion, collateral estoppel, quasi estoppel, laches, statute of limitations.

PROTECTION AGAINST COLLATERAL ATTACKS OR RELITIGATION OF PRIOR JUDGMENTS.

> California Civil Code section 4554.Effect of Final Judgment.
>
> Entry of the final judgment shall constitute a final adjudication of the rights and obligations of the parties with respect to the status of the marriage and property rights and shall constitute a waiver of their respective rights to spousal support, rights to appeal, and rights to move

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for a new trial.

California Civil Code section 1915 (in effect when the 1966 divorce judgment was rendered and for nine years thereafter), and California Code of Civil Procedure section 1713.3, both require that foreign state and foreign country judgments be given the same effect as local judgments (which are themselves conclusive of the rights and obligations of the parties):

California Civil Code section 1915:

> A final judgment of any tribunal of a foreign country having jurisdiction, according to the laws of such country, to pronounce the judgment, shall have the same effect as final judgments rendered in this state. [and providing the same finality of judgments as California Civil Code section 4554 and Code of Civil Procedure section 1908.]

AVAILABLE COPY

California Code of Civil Procedure section 1713.3:

> "A foreign judgment ... is conclusive between the parties ...

California Civil Code section 5164:

> A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a court of this state. [protected as in Civil Code section 4554 and Code of Civil Procedure 1908 against relitigation and collateral attacks.]

The judicial entry of the 1966 divorce judgment by the Second Judicial District Court in the State of Nevada, County of Washoe, invokes the added protection of the Full Faith and Credit Clause of the United States Constitution, and as statutorily provided by California Civil Code section 5004.

Section 5004. Full Faith and Credit Requirement.

> "... requirement of the Constitution of the United States that full faith and credit shall be given in each

state to the public acts, records, and judicial proceedings of every other state."

California Civil Code sections 4530 (a)(b) and 4531 requires residence for personal jurisdiction.

(a) A judgment decreeing the dissolution of a marriage may not be entered unless one of the parties to the marriage has been a resident ... for three months ...

(b) In any proceeding for legal separation ... residence requirements ... such residence requirements ... of the residence requirements ...

Section 4531. Separate Domicile or Residence of Husband and Wife.

... may have a separate domicile or residence ...

DECLARATION OF SERVICE BY MAIL

I, Kita Browne, declare under penalty of perjury that the following facts are true and correct:

I am a citizen of the United States, over the age of 18 years, and not a party to or interested in the within entitled cause. I served by mail this Petition for Writ of Certiorari, enclosing a true copy of said document in an envelope, addressed as follows:

County Counsel, Solano County
Hall of Justice Building
Fairfield, California 94533

Friedman, Sloan and Ross
407 Sansome Street, Suite 400
San Francisco, Calif. 94511

Attorney General, State of California
350 McAllister Street
San Francisco, California 94102

Executed on August 15, 1986 at Reno, Nevada.

I declare under penalty of perjury that the foregoing is true and correct.

_____
Kita Browne

Supreme Court, U.S.
FILED
OCT 15 1986
JOSEPH F. SPANIOL, JR.
CLERK

86-424

IN THE SUPREME COURT

OF THE

UNITED STATES

October Term, 1986

RODNEY F. STICH

Appellant,

vs.

Emma W. Stich,

Appellee.

On Appeal from the Court of Appeal
and the Supreme Court of the
State of California

APPELLEE'S MOTION TO DISMISS OR AFFIRM

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QUESTIONS PRESENTED

I. DOES THIS COURT HAVE JURISDICTION TO DECIDE AN APPEAL IN WHICH APPELLANT ARGUES FOR THE FIRST TIME BEFORE THIS COURT THAT STATE STATUTES ARE UNCONSTITUTIONAL?

II. WAS APPELLANT SUBJECT TO THE CALIFORNIA COURT'S JURISDICTION?

III. DOES THE RIGHT TO INTERSTATE TRAVEL AND THE DUE PROCESS CLAUSE PROVIDE A RIGHT TO OBTAIN AN EX PARTE MEXICAN DIVORCE DECREE AND HAVE THAT DECREE RECOGNIZED IN THE STATE COURTS OF CALIFORNIA?

IV. IN A DIVORCE ACTION, PENDING A DIVISION OF THE MARITAL ESTATE, MAY THE STATE COURT ORDER A PARTY TO PAY TEMPORARY SPOUSAL SUPPORT AND ATTORNEYS' FEES AFTER A HEARING AT WHICH IT IS DEMONSTRATED THAT AN EX PARTE PRIOR MEXICAN DIVORCE DECREE IS PROBABLY INVALID?

TABLE OF CONTENTS

	Page
STATEMENT OF THE CASE.....	1
A. STATEMENT OF FACTS.....	2
B. PROCEEDINGS IN THE TRIAL COURT.....	4
C. OPINION OF THE DISTRICT COURT OF APPEAL.....	9
ARGUMENT.....	11
I. THIS COURT IS WITHOUT APPELLATE JURISDICTION IN THIS CASE.....	11
II. THE CALIFORNIA COURT HAD PERSONAL JURISDICTION OVER APPELLANT IN THE DISSOLUTION PROCEEDINGS.....	12
III. THE RIGHT TO INTERSTATE TRAVEL AND THE DUE PROCESS CLAUSE DO NOT PROVIDE A RIGHT TO OBTAIN AN EX PARTE MEXICAN DIVORCE AND HAVE THAT DIVORCE RECOGNIZED IN THE STATE COURTS.....	17
IV. APPELLANT RECEIVED DUE PROCESS IN CONNECTION WITH THE AWARD OF TEMPORARY SPOUSAL SUPPORT AND ATTORNEY'S FEES.....	19
CONCLUSION.....	21

TABLE OF AUTHORITIES

Cases	Page
Hanson v. Denckla, 357 U.S. 235 (1958).....	12
In re Marriage of Stich, 169 Cal.App.3d 64 (1985)....	1,10, 11
Ryder v. Ryder, 2 Cal.App.2d 426 (1934).....	19
Shapiro v. Thompson, 394 U.S. 618 (1969).....	17
Sherrer v. Sherrer, 334 U.S. 343 (1948).....	18
Somportex Ltd. v. Philadelphia Chewing Gum Corp., 453 F.2d 435 (3d Cir. 1971).	19
Toronto -Dominion Bank v. Hall, 367 F.Supp. 1009 (E.D. Ark. 1973).....	19

Statutes and Rules	
Cal. Civil Code §4356.....	14,15 16
Cal. Civil Code §4357.....	4,9
Cal. Civil Code §4370(a).....	4,9
Cal. Code Civil Procedure §418.10.....	15,16
28 U.S.C. §1257(2).....	1,11
Rule 201(f), Federal Rules of Evidence.....	7
Rule 16(1)(b), Supreme Court Rules.....	1

Other Authorities

2 B.D. Witkin, California Procedure, § 169 (3d Ed. 1985)..... 15

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Appellee, EMMA W. STICH, respectfully moves this Court to dismiss this appeal or affirm the judgment of the Court of Appeal of the State of California. Appellee's motion is made pursuant to Supreme Court Rule 16(1)(b) on the grounds that the Court does not have appellate jurisdiction and that the appeal does not present a substantial federal question.

STATEMENT OF THE CASE

This is an appeal pursuant to 28 U.S.C. §1257(2), from a final judgment entered on April 24, 1985 by the California District Court of Appeal. That judgment affirmed a trial court's order in a divorce action granting appellee temporary spousal support and attorneys' fees pending division of the marital estate. In re Marriage of Stich, 169 Cal.App.3d 64 (1985).

A. STATEMENT OF FACTS

Emma and Rodney Stich were married on September 5, 1943 in the State of Texas. In 1950, the Stiches moved from Texas to California where they resided until 1962. During their stay in California, the Stiches acquired several parcels of real property. Over the years of the marriage, however, appellant unlawfully obtained quitclaim deeds from appellee as to each of these properties.

In December of 1965, appellant travelled to Juarez, Mexico in order to obtain an ex parte divorce. Immediately upon his arrival in Mexico, appellant obtained an attorney for himself and for appellee and filed papers for divorce. The final decree of divorce was entered on January 31, 1966, some sixty days

later.[1] Immediately upon entry of the divorce decree, appellant left Mexico and returned to the United States.

Appellant represented to the Mexican court - - and the divorce decree stated - - that the parties had no community property and that appellee was not entitled to child or spousal support.

Appellee was never contacted by the lawyer appellant claims to have obtained for her and was not otherwise represented in the Mexican proceeding. Nor did appellee have notice of the entry of the final decree.

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[1]It is telling that nowhere in his 45 page jurisdictional statement does appellant advise this Court that his prior "divorce decree" was issued by a Mexican court, rather than by the court of a sister-state.

B. PROCEEDINGS IN THE TRIAL COURT

On December 6, 1982, appellee petitioned for dissolution of the marriage in the California Superior Court in and for the County of Solano. Simultaneously, she moved the court, pursuant to California Civil Code §§ 4357 and 4370, for spousal support and attorneys' fees while the divorce action was pending.[2] In late December, appellee took appellant's deposition.

In response to the noticed motion for temporary support and attorneys'

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[2]California Civil Code §4357 provides in part: "During the pendency of any proceeding . . . [for dissolution of marriage] the Superior Court may order the husband or wife . . . to pay any amount that is necessary for the support and maintenance of the wife or husband . . . ."

Civil Code §4370(a), provides in part: "During the pendency of any proceeding under this part, the court may order any party . . . to pay such amount as may be reasonably necessary for the cost of maintaining or defending the proceeding and for attorneys fees . . . ."

fees, appellant urged that the existence of the prior Mexican divorce decree precluded any of the relief requested by appellee and he moved to quash the proceedings. Prior to the hearing, the parties submitted extensive declarations and legal briefs on this point. Appellant, himself, submitted three separate declarations, and his lawyers filed four memoranda of points and authorities pertaining to the validity of the Mexican decree. Virtually all of appellee's argument that appellant had not established domicile in Mexico was based on appellant's own deposition testimony and declarations.

On February 25, 1983, the Honorable Dwight C. Ely conducted a hearing on appellee's request for temporary support and attorneys' fees, and on appellant's motion to quash. The court heard

extensive argument on the legal issues. [3] After the hearing, appellant filed two more declarations, and two additional briefs, bringing the total of briefs he had submitted to six.

On May 10, 1983, Judge Ely, on this considerable record, noted the probable invalidity of the Mexican decree and granted appellee's motion for temporary spousal support and attorneys' fees, but deferred action on the motion to quash until a trial could be conducted on the issue of the validity of the Mexican divorce.[4] In his ruling, Judge Ely

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[3]The court took under submission appellant's motion to quash, while allowing both parties further briefing on that issue.

[4]Appellant states somewhat disingenuously that a final decision had not been rendered on his Motion to Quash when the jurisdictional statement was first filed on December 22, 1986 (sic).

(Footnote Continued)

observed that respondent's challenge to the Mexican decree:

> . . . is based upon lack of jurisdiction of that court, which in turn in based upon lack of domicile ot one or both parties in that jurisdiction. There is sufficient shcwing when the evidence and law indicate a fair or reasonable probability of success at the trial. If that showing is made, temporary support and attorneys' fees can be awarded.

After careful review of the

(Footnote Continued)
Jurisdictional Statement at 23. However, as he knows, the Honorable William E. Jensen denied the Motion to Quash on January 14, 1986.

After hearing evidence in a five-day trial and reading voluminous briefs, Judge Jensen denied the motion to quash, finding: (1) the Mexican divorce is invalid under the laws of Mexico and the State of Chihuahua; (2) appellant was not domiciled in Chihuahua, Mexico; (3) appellee did not appear, was not represented, and therefore did not participate in the divorce proceedings; (4) since neither party established domicile in Mexico, Mexico had no interest in having its law applied to the divorce proceedings; and (5) appellee was not estopped to contest the validity of the Mexican divorce. The Court may take judicial notice of the decision pursuant to Fed. R. Evid. 201(f).

> evidence and law, the court is convinced that the test had been met. Respondent obviously went to Mexico for the dissolution. He barely met the time requirements and returned to the United States immediately upon receipt of his decree.

See Appendix "C" attached to Jurisdictional Statement.

Based on the foregoing findings, the trial court ordered appellant to pay temporary spousal support in the sum of $400 per month and attorneys' fees in the sum of $2,500. Appellant appealed to the California District Court of Appeal.

C. OPINION OF THE DISTRICT COURT OF APPEAL

The District Court of Appeal affirmed the decision of the trial court and awarded sanctions against appellant for abuse of the appellate process. On appeal, appellant had urged that the California court must recognize the Mexican divorce decree because he had become a domicile of Mexico and because appellee should be estopped to contest the validity of that decree. At no time in those proceedings did appellant challenge the constitutionality of either Civil Code §4357 or Civil Code §4370.

In its decision, the appellate court held:

> . . . Where the subject matter or jurisdiction of the California court is challenged in a marital dissolution action, based upon the existence of a prior decree of divorce issued by another jurisdiction, the validity of which is in dispute, California courts have

> jurisdiction to issue temporary orders pending the adjudication of the validity of the foreign decree. The issuance of such an order is not an abuse of discretion if the court determines that there is a reasonable probability of success in establishing the invalidity of the foreign decree and the proceeding has been instituted in good faith.

167 Cal.App.3d at 229.

The appellate court then held that appellee had established that there is a "reasonable probability" that the Mexican decree was invalid." Id. at 231-33.

After extensive examination of the factual background of the case, the appellate court also awarded sanctions against appellant in the amount of $10,000 for his abuse of the appellate process. In essence, the court determined that appellant had appealed the temporary spousal support and attorneys' fees orders and stayed

enforcement of those orders in an effort to "starve" appellee into submission.[5]

On August 28, 1985, the California Supreme Court denied appellant's petition for review. Appellant now attempts to invoke the appellate jurisdiction of this court.

ARGUMENT

I. THIS COURT IS WITHOUT APPELLATE JURISDICTION IN THIS CASE.

Appellant improperly invokes the appellate jurisdiction of this court pursuant to 28 U.S.C. §1257(2). The appeal is predicated upon the contention that as applied to the facts of this

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[5]In the view of the Court of Appeal, the stay of such support orders pending appeal poses a potential for massive abuse of the appellate process in family law cases. By imposing sanctions, the court sought to deter resort to the appellate process where the appeal is intended solely to procure a tactical advantage over the spouse who has neither funds to support herself nor access to the marital estate. 169 Cal.App.3d at 75-78.

case, the California statutes providing for temporary spousal support and attorneys' fees are contrary to the United States Constitution. In the state court, however, appellant did not object that the statutes themselves were invalid, but rather that the effect of the state court's exercise of jurisdiction and the circumstances of this case deprived him of various rights under the Constitution.

In Hanson v. Denckla, 357 U.S. 235, 244 (1958) this Court held that where the jurisdictional statute itself was not challenged in the lower courts, this court is without jurisdiction of the appeal and it must be dismissed.

II. THE CALIFORNIA COURT HAD PERSONAL JURISDICTION OVER APPELLANT IN THE DISSOLUTION PROCEEDINGS.

Appellant repeatedly claims that the court in the dissolution proceedings did not have jurisdiction over him. His jurisdictional statement evidences his

failure to understand the concept of jurisdiction, particularly the difference between personal and subject-matter jurisdiction.

At the time appellee filed her petition for dissolution, appellant was a resident of Solano County, California. Appellant was personally served with the petition in Solano County on December 9, 1982. Clearly, the court obtained personal jurisdiction over appellant at that time.

Further, contrary to appellant's assertion that he did not make a general appearance prior to the filing of his Motion to Quash, appellant made a general appearance by filing a Responsive Declaration to Order to Show Cause, Points and Authorities, and Income and Expense Declaration, all dated December 27, 1982, and a Supplemental Declaration dated January 18, 1983. In addition, on February 18,

1983, in the same papers whereby appellant made his Motion to Quash, he also moved for dismissal and summary judgment, and concurrently with the filing of the Motion to Quash, appellant filed a Demurrer to Petition for Dissolution and a Response.

None of the above-listed papers raised the issue of personal jurisdiction. In fact, in appellant's Opening Brief, filed March 11, 1983, he states: "If there had been no divorce in Mexico, it would be clear that the petitioner could bring an action in California, residence of the respondent, to terminate the ... marriage, and she would be entitled to temporary support and attorney's fees." (p. 2-3) Thus, appellant failed to make a timely challenge to personal jurisdiction.

Appellant now cites Cal. Civ. C. § 4356 as the basis for his claim that from the filing of his Motion to Quash,

until the denial of that motion, he was in a "protected special appearance status." (Jurisdictional Statement at 8.) That statute provides that while a Cal. C. Civ. Pro. § 418.10 motion to quash service of summons is pending, the respondent may appear in opposition to pendente lite relief (such as temporary spousal support) and such appearance shall not be deemed a "general appearance." However, Cal. Civ. C. § 4356 was not enacted until 1984. Under California law as it existed at the time Appellant filed his Motion and Quash and until the effective date of Cal. Civ. C. § 4356, opposition to motions for pendente lite orders for temporary spousal support and attorneys' fees and costs constituted a general appearance, nullifying a challenge to jurisdiction. 2 Witkin, B.D., California Procedure, 3d Ed. 1985, § 169 at p. 554. Further, appellant's Motion

to Quash was not based on a challenge of the Court's personal jurisdiction, which is the basis of a Cal. C. Civ. Pro. § 418.10 motion to quash service of summons, but rather on a challenge to the Court's subject-matter jurisdiction. Consequently, appellant cannot avail himself of the benefits of Cal. Civ. C. § 4356.

Thus, the Court had personal jurisdiction over appellant from the date of service, appellant made a general appearance thereafter, and contrary to appellant's claim, he was not in a "protected special appearance status" from the February 18, 1983 filing of his Motion to Quash until the January 14, 1986 order denying that motion and holding the Mexican divorce decree invalid.

III. THE RIGHT TO INTERSTATE TRAVEL AND THE DUE PROCESS CLAUSE DO NOT PROVIDE A RIGHT TO OBTAIN AN EX PARTE MEXICAN DIVORCE AND HAVE THAT DIVORCE RECOGNIZED IN THE STATE COURTS.

Appellant argues, without benefit of authority, that the right to interstate travel entitles him to obtain an ex parte divorce in Mexico that is binding upon the courts of the State of California. The argument hardly merits a response. While various provisions in the Constitution may prohibit the states from imposing "regulations which unreasonably burden or restrict . . . movement between the states, Shapiro v. Thompson, 394 U.S. 618, 629 (1969), the Constitution nowhere gives citizens the right to obtain ex parte divorces in foreign countries and have them recognized in the state courts of this country. The case might be different if the parties had litigated the validity of the Mexican divorce decree in the

court of a sister-state, and California refused to recognize the result of that litigation. See Sherrer v. Sherrer, 334 U.S. 343 (1948). In such a case, California's refusal to recognize the sister-state judgment would violate the Full Faith and Credit Clause, and perhaps incidentally, the right to travel between states. But that is not the case here.

Because appellant chose to obtain his ex parte divorce in the courts of a foreign country rather than the courts of a sister-state, the Full Faith and Credit Clause has no application here. Refusal of the California courts to recognize the Mexican decree is purely a matter of California law and implicates no federal constitutional guarantees.[6]

---

[6]California distinguishes between judgments obtained in the courts of her
(Footnote Continued)

There is neither a constitutional provision, nor any other authority that requires California to recognize the judgment of a foreign country. See Somportex Ltd. v. Philadelphia Chewing Gum Corp., 453 F.2d 435, 440 (3rd Cir. 1971); Toronto-Dominion Bank v. Hall, 367 F.Supp. 1009 (E.D. Ark. 1973)

Because neither the right to interstate travel nor the Due Process Clause requires California to recognize an ex parte Mexican divorce decree, the decision of the appellate court should be affirmed.

IV. APPELLANT RECEIVED DUE PROCESS IN CONNECTION WITH THE AWARD OF TEMPORARY SPOUSAL SUPPORT AND ATTORNEYS' FEES.

Appellant argues that he was denied

(Footnote Continued)
sister-states, which are entitled to full faith and credit, and those obtained in the courts of foreign countries, which are subject merely to the principles of comity. See Ryder v. Ryder, 2 Cal.App.2d 426, 430 (1934).

a hearing on the probable invalidity of the Mexican decree, before the trial court entered its order requiring appellant to pay temporary support and attorneys' fees. Jurisdictional Statement at 9 and 37.

Appellant is wrong. Prior to the entry of the court's order, appellant submitted a total of five declarations, three of them before the hearing. These declarations set forth every evidentiary fact appellant relied upon in making his motion to quash the proceedings. As noted above, his attorneys also submitted no less than six legal briefs to the court regarding the validity of the Mexican decree. Further, his filing of two declarations after the hearing gave appellant a full opportunity to meet appellee's evidence. Thus, appellant had a full and complete opportunity to present all of his

evidence and meet appellee's evidence prior to the decision.

Because appellant was given an opportunity to present all of his evidence and legal arguments, and to meet all of appellee's evidence (which was entirely based on appellant's own admissions) prior to the court's decision, he was afforded due process.

CONCLUSION

Appellee respectfully submits that the questions upon which this cause depends are so literally insubstantial, so as not to need further argument, and appellee respectfully moves the court to dismiss this appeal, or, in the alternative, to affirm the judgment

entered in the cause by the California District Court of Appeal.

Dated: October 15, 1986

Respectfully
Submitted,

FRIEDMAN, SLOAN &
ROSS, P.C.

By_____
Jeffrey S. Ross
Counsel for Appellee

013:CM3

serious actions of the California courts.

III THE UNITED STATES SUPREME COURT HAS A STATUTORY RESPONSIBILITY TO PROVIDE APPELLANT HIS FIFTH AMENDMENT DUE PROCESS RIGHT TO A FEDERAL COURT FORUM.

This responsibility is especially acute in light of the close relationship of the massive violations of appellant's civil and constitutional rights, the blatant unconstitutional law applied during the judicial destruction of appellant, and the close and suspicious relationship of these acts with appellant's attempts to expose a major aviation and government scandal. Title 28 United States Code Section 1257(2) provides that the United States Supreme Court shall have the responsibility of appellate review when the constitutionality of a state law--the

published decision of the California Court of Appeal, or the unconstitutional interpretation and application of state law, is appealed to the Court. Section 1257 likewise provides appellant statutory rights that are denied to him, and violated by this Court, by arbitrarily renaming the appeal of flagrantly unconstitutional California law a petition for writ of certiorari. The dismissal of appellant's appeal was forewarned by the obstructions placed in appellant's path as he sought to have the appeal docketed, and which is revealed in the correspondence with Chief Justice Rehnquist.

Appellant argued in his jurisdictional statement and reply brief that the published decision constituting California decisional law, In re Marriage of Stich (1985) 167 Cal.App.3d 226, is riddled with unconstitutional holdings totally alien to either the United

States, or any country operating under a system of law. The facts stated in those writings leave no doubt, in the minds of reasonable men, that such unconstitutional violations did occur, and threaten large segments of the divorced population of the United States with deprivations of their civil and constitutional rights more suitable to a tyrannical third world dictatorship, and does violence to the concept of justice, and civil and constitutional rights.

By its dismissal, this Court has approved the unconstitutional holdings, the judicial misfeasance and malfeasance, by the California courts.

IV THIS COURT HAS BEEN MADE AWARE OF APPELLANT'S ATTEMPTED EXPOSURE OF AN AIRLINE CRASH RELATED AVIATION AND GOVERNMENT SCANDAL, AND THE CLOSE RELATIONSHIP TO THE BIZARRE, ILLEGAL, AND UNCONSTITUTIONAL ATTACKS UPON APPELLANT'S PERSONAL

LIBERTIES, AND HIS PERSONAL AND PROPERTY RIGHTS.

Title 42 United States Code Section 1986 is again invoked by this court's knowledge of the major aviation and government scandal which is at the core of the attacks upon appellant's property and money rights. The violation of civil and constitutional rights, address the unconstitutional holdings and unconstitutional decisional law of the State of California. However, this court already knows from writings related to the docketing of this action that the constitutional rights of those who perished in fraud related airline crashes are closely related to the unconstitutional acts perpetrated against appellant.

Appellant's attempts to correct, and then to expose the crash related violations when correction was repulsed, led to a miscalculation by a high

government block, to protect, rather than to expose and correct, the crash-causing misconduct. When this criminal misuse of government facilities resulted in easily identifiable resulting airline crashes, and appellant continued his exposure attempts, including filing mandamus actions in the United States District Courts of the Ninth Circuit Court of Appeals, the complicity of silence and coverup then expanded, and with this expansion, still further airline crashes and deaths.

In another miscalculation, the government forces were then targeted directly upon appellant, rather than upon the earlier coverup. This resulted in the bizarre holdings that are now before this United States Supreme Court, which itself placed obstacles in appellant's path to a docketing of his jurisdictional statement.

The massive violations of California

and federal law, the unconstitutional interpretations and applications of state law that are far beyond the realm of error, the judicial misfeasance and malfeasance, are so severe, so numerous, so deliberate, that no reasonable person would fail to recognize their perpetration as deliberate. Appellant describes these activities in his second printing of the book, The Unfriendly Skies, an Aviation Watergate.

As appellant escalated his exposure activities in 1981 and 1982, by his appearances as guest on hundreds of radio and television shows, by his published books, and by his filing of federal mandamus actions directed to specific airline crashes and the evidence supporting the allegations of criminal fraud, the next miscalculation occurred; appellant was targeted for a "divorce" action to destroy his financial base for his costly exposure activities, although

the marriage had been legally terminated two decades earlier, and the 1966 divorce judgment is now registered and confirmed in six subsequent court jurisdictions. for the past two decades.

To perpetrate this hoax, and circumvent the protection of California, federal, and constitutional law, the bizarre and unconstitutional argument was raised that California courts would not recognize the divorce judgments rendered by courts foreign to California if the court relied upon residence for personal jurisdiction. It is on this patently unconstitutional holding that the subsequent unconstitutional attacks were perpetrated, and established in the decisional law under appeal.

It is this approval, this denial of appellant's Fifth Amendment due process rights, these violations of Fourteenth Amendment and other constitutional rights, as articulated in the published

decision of the California Court of Appeal, that appellant requests a rehearing.

CONCLUSION

This court has a responsibility. Appellant has a due process right to protection against being targeted by judicial misfeasance and malfeasance arising out of his attempts to expose a major aviation and government scandal. He has a right to expect that the United States Supreme Court will meet its responsibilities, when it is obviously apparent that all protections in law have been violated, and that appellant is in the final stages of a total destruction by the forces seeking to destroy him by massive unconstitutional violations of state law, and the arrogant rendering of patently unconstitutional decisional law.

constitutional, shirk its duty, or to extend the complicity, by misstating appellant's appeal is actually a petition

for writ of certiorari, and then dismissing appellant's appeal. As a matter of law, and constitutional responsibilities, this Court has the responsibility to hear the appeal, and lacks the discretion to turn its back on a major aviation and government scandal, and the extension of it in an attack upon a targeted United States citizen.

The California published decision is a massive and classic example of a state's judicial system trampling fundamental constitutional rights, misused to destroy a targeted United States citizen, whose only "fault" was in exercising the responsibilities and concern of a citizen and government air safety investigator.

Appellant brought to this court an appeal, over which this Court has a statutory, constitutional and moral responsibility to provide a fair and impartial forum.

The instant action will not be

resolved by a coverup by any federal court, including this Court. This court has a responsibility to reconsider its dismissal of appellant's appeal.

Dated: November 26, 1986.

Respectfully
Submitted,

_____

Rodney F. Stich
Appellant in pro se

CERTIFICATION OF GOOD FAITH

I, Rodney F. Stich, certify that this petition for rehearing is presented in good faith, and not for delay.

Dated: November 26, 1986.

_____

Rodney F. Stich

DECLARATION OF SERVICE BY MAIL

I, Kita Browne, declare under penalty of perjury that the following facts are true and correct:

I am a citizen of the United States, over the age of 18 years, and not a party to or interested in the within entitled cause. I served by mail this Opposition to Dismiss or Affirm, on November 28, 1986, enclosing a true copy of said document in an envelope, addressed as follows:

County Counsel, Solano County
Hall of Justice Building
Fairfield, California 94533

Friedman, Sloan and Ross
407 Sansome Street, Suite 400
San Francisco, Calif. 94511

Executed on November 28, 1986 at Reno, Nevada.

I declare under penalty of perjury that the foregoing is true and correct.

_____
Kita Browne

Supreme Court, U.S.
FILED
NOV 5 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-424

IN THE SUPREME COURT

OF THE

UNITED STATES

October Term, 1985

RODNEY F. STICH

Appellant

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SOLANO;
COURT OF APPEAL, STATE OF CALIFORNIA,
FIRST APPELLATE DISTRICT;
EMMA W. STICH,

Appellees.

On Appeal from the Court of Appeal
of the State of California

OPPOSITION TO MOTION TO DISMISS OR AFFIRM

Rodney F. Stich
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TABLE OF CONTENTS

Page

ARGUMENT.....1

I. APPELLEE FALSELY ARGUES THAT APPELLANT HAD NOT RAISED THE ISSUE IN STATE COURT OF THE UNCONSTITUTIONAL INTERPRETATION AND APPLICATION OF STATE LAW.....1

a. CAlifornia Law, When Constitutionally Interpreted and Applied, Prohibit Denying Residence As A Base For Personal Jurisdiction.....1

b. The California Courts Unconstitutionally Sought Authority In The California Family Law Act.....4

c. California Law Protects Parties While In A Protected Special Appearance Status.....5

d. Orders To Pay Attorney Fees, Costs, and Temporary Spousal Support Were Without Authority or Jurisdiction..7

e. A Prior Divorce Judgment Is A Final Adjudication Of The Rights And Obligations Of the Parties.....8

f. The Registration of the 1966 Judgment In California Courts, and Courts Throughout the United States, Are Public Acts Requiring Full Faith and Credit Recognition.....9

g. The California Courts Unconstitutionally Interpreted State Law To Punish Appellant For Exercising Fundamental Appellate Remedies.....10

II. APPELLEE FALSELY ARGUES THAT THE 1966 DIVORCE PROCEEDING WAS EX PARTE.....12

III. APPELLEE SEEKS SUPPORT IN 52 YEAR OLD LAW THAT HAD BEEN KNOWINGLY SUPERSEDED AND HELD ILLEGAL AND UNCONSTITUTIONAL FOR THE PAST FORTY YEARS.....14

IV. THE CALIFORNIA FAMILY LAW ACT PROVIDES NO AUTHORITY FOR COLLATERAL ATTACKS.....15

V. APPELLEE SEEKS SUPPORT FROM THE VERY DECISION THAT REMOVED THE RIGHT TO A DIVORCE FROM THE KEYHOLE STAGE.....16

CONCLUSION.....17

TABLE OF AUTHORITIES

Cases — Page

Coe v. Coe,
(1948) 334 U.S. 378.....15

Perrin v. Perrin,
408 F.2d 107 (3rd Cir. 1969)..15,17

Sherrer v. Sherrer,
(1948) 334 U.S. 343.....15,16

Vanderbilt v. Vanderbilt,
(1957) 354 U.S. 416.....13,15

In re Marriage of Stich,
(1985) 167 Cal.App.3d 226.....10

Rediker v. Rediker,
(1950) 35 Cal.2d 796.....4

Ryder v. Ryder,
(1934) 2 Cal.App.2d 426.....14,15

Scott v. Scott,
(1958) 51 C.2d 249.....4,14

Spellens v. Spellens,
(1957) 498 C.2d 210.....4

Whealton v. Whealton,
(1967) 67 C.2d 656.....4

Statutes and Rules

Cal. Civil Code § 4357.....7

Cal. Civil Code § 4370.....7

Cal. Civil Code § 4530.....3

Cal. Civil Code § 4356.....5

Cal. Civil Code § 4554.....8,10,...8

Cal. Civil Code § 5004.....9

Cal. Code of Civil Procedure
§ 410.10 2

Cal. Code of Civil Procedure
§ 418.10(a).....3,12

Cal. Code of Civil Procedure
§ 902.....12

Cal. Code of Civil Procedure
§ 904.1.....12

Cal. Code of Civil Procedure
§ 907.....11

Cal. Code of Civil Procedure
§ 1699.....8

Cal. Code of Civil Procedure
§ 1713.5(a)(2)(3).....2

Cal. Code of Civil Procedure
§ 1908.....8

Cal. Code of Civil Procedure
§ 1913.....8,9,....8

Cal. Code of Civil Procedure
§ 1914.....8

Cal. Code of Civil Procedure
§ 1915.....8,10,..8

Cal. Evidence Code
§ 666.....3

Cal. Rule of Court 26(a).....11

Cal. Rule of Court 1201(c).....4,7,15

Cal. Rule of Court 1207.....4,15

Cal. Rule of Court 1211.....4,15

Cal. Rule of Court 1232.....6

ARGUMENT

Appellant Rodney F. Stich opposes appellees' motion to dismiss or affirm, and addresses the many errors of fact and errors of law in appellee's brief.

I. APPELLEE FALSELY ARGUES THAT APPELLANT HAD NOT RAISED THE ISSUE IN STATE COURT OF THE UNCONSTITUTIONAL INTERPRETATION AND APPLICATION OF STATE LAW.

Appellee seeks to have this action dismissed on the argument that appellant had not raised the issue of the unconstitutional interpretation and application of state law in his state court briefs. Appellant repeatedly raised this issue, repeatedly requested statement of decisions to address the unconstitutional interpretation and application of state law. These unconstitutional interpretation and applications included, inter alia:

a. California Law, When Constitutionally Interpreted and Applied, Prohibit Denying Residence As A Base For Personal Jurisdiction.

California law specifies residence as a base for personal jurisdiction. The California courts repeatedly held that they would not recognize divorce judgments rendered by jurisdictions foreign to California that were based only on residence, without a determination of domicile. This bizarre holding flies in the face of the massive numbers of California law, court practice, federal court holdings, that prohibits that same holding, including, inter alia: (a) California Code of Civil Procedure Sections 410.10 (jurisdiction acquired on any basis not inconsistent with the Constitution, known as California's long arm jurisdiction statute.); (b) Code of Civil Procedure §

1713.5(a)((2)(3) (jurisdiction acquired on the basis the person voluntarily appeared and agreed prior to the start of the action to the court's jurisdiction); (c) Code of Civil Procedure § 1713.5(b) (the courts may recognize other bases of jurisdiction); (d) Code of Civil Procedure § 418.10(a) (jurisdiction automatically acquired if not objected to within a limited time after service of process); (e) Code of Civil Procedure § 430.80(a) (objection to jurisdiction waived by failure to object to the personal jurisdiction of the 1966 divorce court); Evidence Code § 666 (requires conclusive presumption that the prior court acted within its lawful exercise of jurisdiction); Civil Code §§ 4530 and 4531 provides for residence as a recognized base for personal jurisdiction, prohibiting the California courts from voiding judgments rendered by other courts, over residents of the other

court's jurisdiction, on the holding it would not recognize residence as a basis for personal jurisdiction.

California decisional law, including Rediker v. Rediker (1950) 35 Cal.2d 796; Spellens v. Spellens (1957) 498 C.2d 210; Scott v. Scott (1958) 51 C.2d 249; Whealton v. Whealton (1967) 67 C.2d 656.

b. The California Courts Unconstitutionally Sought Authority in the California Family Law Act.

The California courts unconstitutionally interpreted the California Family Law Act, including (aa) Civil Code §§ 4530, 4531 (which require a "proceeding" for authority, personal and subject matter jurisdiction); (bb) California Rule of Court 1201(c) (which limits the authority and jurisdiction under the Family Law Act solely to "proceedings ... for dissolution of marriage, for nullity of marriage, or for legal separation of the parties); (cc) California Rule of

Court rules 1211 and 1207 prohibit either party from asserting "against the other party ... any cause of action or claim for relief other than for the relief provided in these rules or the Family Law Act."

c. California Law Protects Parties While In A Protected Special Appearance Status.

Appellant was in a protected special appearance status from the February 17, 1983 filing of the motion to quash, until January 14, 1986, during which appellant's personal and property rights were taken, with great irreparable harm. California Civil Code §§ 4356 provides for a protected special appearance following the raising of an objection to the California court's personal jurisdiction.

Appellee argues that the protection of a motion to quash does not accrue to

appellant (p.13), as the protection of California Civil Code Section 4356 was not enacted until 1984. That statute was originally enacted in 1970, suspended, and reinstated. Concurrent protection was provided by, inter alia, California Rule of Court 1232(a), as does federal and state decisional law. Rule 1232 states: "A defense which is raised by a motion to quash pursuant to Rule 1230 is not waived by later filing a response." Appellant immediately objected to the jurisdiction of the California courts in his first response to the petition for dissolution of marriage, and then followed with a motion to quash. The California court accepted the filing of the motion to quash, and rendered a decision on the motion--three years later, on January 13, 1986. Irregardless of that motion to quash, the California trial court lacked subject matter jurisdiction under the California Family Law Act to collaterally

attack the 1966 divorce judgment, appellant's personal and property rights, rescind the due process right to invoke court jurisdiction on the universally recognized basis of residence, and substitute the illegal and unconstitutional domicile invalidating argument.

d. Orders To Pay Attorney Fees, Costs, and Temporary Spousal Support, Were Without Jurisdiction.

Orders for attorney fees and costs, and temporary spousal support obtain authority in "proceedings" under the Family Law Act, and as specifically provided by the authority of Civil Code § 4357 and 4370. A "proceeding" is defined by California Rule of Court 1201(c) as a "proceeding" to terminate a marriage, a nullity of marriage, or legal separation. As a matter of law, there was no marriage to terminate, and the prior divorce judgment removed the statutory

requirement for subject matter jurisdiction.

e. A Prior Divorce Judgment Is A Final Adjudication Of The Rights And Obligations Of the Parties.

The final adjudication of the rights and obligations of the parties is provided by law: (aa) Civil Code § 4554 provides for the final adjudication of the rights and obligations of the parties following the rendering of a divorce judgment, as was provided by law of the 1966 court forum and stated in the divorce judgment recitals. This protection was and is extended to foreign country judgments by, inter alia, Code of Civil Procedure § 1915; Code of Civil Procedure § 1908 (conclusiveness and effect of judgment); Code of Civil Procedure § 1913 (Conclusiveness of judgment of sister state--including the judicial registration of the 1966 judgment); Code of Civil Procedure § 1914

(international comity judgment public policy includes this statute addressing the effect of a foreign country judgment as being the same as if it were the record of a court of admiralty of the United States); Code of Civil Procedure § 1915 (in effect when the 1966 judgment was rendered, and for nine years thereafter, requires recognition as a final judgment of California); California Code of Civil Procedure § 1699 (upon registration the judgment must be treated in the same manner as a judgment rendered by California courts);

f. The Registration of the 1966 Judgment In California Courts, and Courts Throughout the United States, Are Public Acts Requiring Full Faith and Credit Recognition.

Civil Code § 5004 and Code of Civil Procedure 1913 statutorily implements the protection of the Full Faith and Credit

Clause of the United States Constitution, requiring recognition of the public acts of other courts and jurisdictions within the United States, including the registration and confirmation of the 1966 judgment in the Superior Court, Contra Costa County, State of California; and the registration in jurisdictions of Nevada, Colorado, Oklahoma, and Texas. California statutes, including Code of Civil Procedure § 1915, required that foreign country judgments be recognized as local judgments, invoking the protection of Civil Code § 4554.

g. The California Courts Unconstitutionally Punished Appellant For Exercising Fundamental Appellate Remedies.

The California court held in its published decision, In re Marriage of Smith (1985) 167 Cal.App.3d 226, that appellant's exercise of procedural due process remedies, as specifically

process remedies, as specifically provided by California law, were frivolous acts. The published decision unconstitutionally applied California Code of Civil Procedure § 907 and California Rule of Court 26(a) as punishment for exercising this fundamental constitutional right. The published decision held that appellant should have willingly submitted to voiding of his personal and property rights and the massive violation of his protection in state, federal and constitutional law. From such holding appellant was subsequently ordered to go to jail for five days, and then subjected to a bench warrant for his arrest, which is still pending. Appellant was ordered to pay sanctions, attorney fees, costs, and other orders totaling approximately $50,000, on the holding that it was frivolous for appellant to (a) file a motion to quash (which was specifically

provided by California Rule of Court 1230(a)(2) when there exists a prior judgment, and Code of Civil of Civil Procedure § 418.10(a)(1); filing a petition for writ of prohibition, as provided by Code of Civil Procedure § 418.10(c), precipitated by the massive violations and unconstitutional interpretation and application of judgment recognition law and other relevant statutes; and appellant's appeal, as authorized by Code of Civil Procedure §§ 902 and 904.1, which was brought about by the massive violations and unconstitutional interpretation and application of state law. These massive takings of personal liberties arose from the California court's refusal to recognize residence as a base for personal jurisdiction.

II. APPELLEE FALSELY ARGUES THAT THE 1966 DIVORCE PROCEEDING WAS EX PARTE.

Appellee falsely states that the 1966

divorce judgment was an ex parte proceeding, (p.18), when the facts clearly show otherwise. The divorce judgment recitals stated that appellant's former wife was personally served; that she signed notarized divorce documents submitting herself to the court's personal jurisdiction; appeared via legal counsel; accepted the benefits of the divorce proceedings and divorce judgment; and admitted in declarations and testimony to signing the divorce documents. or arguendo, if the 1966 divorce proceedings had been ex parte, the dissolution of marriage would be res judicata, and the former wife's remedies would be filing a timely action in her State of Texas for whatever money rights to which she might have been entitled 21 years ago, under the laws of her state of residence. (Vanderbilt v. Vanderbilt (1957) 354 U.S. 416, upholding ex parte divorce judgments). Further, the matter

of the prior court's proceedings are res judicata, and not subject to relitigation 21 years later.

III. Appellee Seeks Support In 52 Year Old Law That Had Been Knowingly Superseded and Held Illegal And Unconstitutional For the Past Forty Years.

Appellee seeks support in the 52 year old holding of Ryder v. Ryder (1934) 2 Cal.App.2d 426, 420, arguing that only the principles of comity applies to protect persons holding foreign divorce judgments rendered while they resided in such foreign jurisdictions. Concurrently, appellee then holds that residence will not be recognized as a base for personal jurisdiction, holding that personal and property rights of these millions of persons can be voided at will by California courts. Appellee was fully aware that the lower court ruling of Ryder was specifically overruled in Scott

v. Scott (1958) 51 C.2d 249, as the California Supreme Court held: "Ryder v. Ryder ... These cases should be disapproved insofar as they make domicile a sine qua non of recognition." The Ryder case was overruled by landmark federal decisions, including Perrin v. Perrin, 408 F.2d 107 (3rd Cir. 1969); Sherrer v. Sherrer (1948) 334 U.S. 343; Coe v. Coe (1948) 334 U.S. 378; Vanderbilt v. Vanderbilt (1957) 354 U.S. 416.

IV. THE CALIFORNIA FAMILY LAW ACT PROVIDES NO AUTHORITY FOR COLLATERAL ATTACKS.

There is no authority in the California Family Law Act to collaterally attack a prior judgment, to substitute domicile for residence, or any other claim other than that provided by Rule of Court 1201(c). The California Family Law Act specifically limits authority and jurisdiction to "proceedings," as defined and limited in Rule of Court 1201(c).

California Rule of Court 1211 and 1207 prevents the other party from asserting "any cause of action or claim for relief other than the relief provided in these rules of the Family Law Act." Rule 1201(c) sets these limits.

V. APPELLEE SEEKS SUPPORT FROM THE VERY DECISION THAT REMOVED RIGHT TO DIVORCE FROM THE KEYHOLE STAGE.

Appellee argues (p.18) that Sherrer v. Sherrer (1948) 334 U.S. 343, does not protect appellant from relitigating the personal jurisdiction of a prior court, arguing that it only applied the protection of Full Faith and Credit. Sherrer prohibited collateral attacks on prior divorce judgments on several bases, one of which was Full Faith and Credit. Res judicata was another basis on which the Sherrer court prohibited collateral attacks. The court did not hold that due process and equal protection of the law

only applied to United States citizens obtaining judgments in sister states. The subsequent landmark case of Perrin v. Perrin, 408 F.2d 107 (3rd Cir. 1969) clarified the right to obtain a divorce in a foreign country and for its recognition by all state courts.

CONCLUSION

The massive numbers of bizarre, illegal and unconstitutional holdings of the California courts, as partly articulated by appellee, are a shocking indictment upon the status of constitutional rights in California courts.

Issues of national importance are implicated in the published decision of the California Court of Appeal. Millions of divorced persons are threatened by that published decision, which is now decisional law of the State of California, and within the jurisdiction of this Court to remedy. The bizarre

holding that residence is not a recognizable base for personal jurisdiction was compounded by, inter alia, the holding that a court foreign to California loses jurisdiction in a divorce action if the former wife later--21 years later, claims she was distraught!

Dated: October 30, 1986.

Respectfully
Submitted,

_____

Rodney F. Stich
Appellant in pro se

DECLARATION OF SERVICE BY MAIL

I, Kita Browne, declare under penalty of perjury that the following facts are true and correct:

I am a citizen of the United States, over the age of 18 years, and not a party to or interested in the within entitled cause. I served by mail this Opposition to Dismiss or Affirm, on November 1, 1986, enclosing a true copy of said document in an envelope, addressed as follows:

County Counsel, Solano County
Hall of Justice Building
Fairfield, California 94533

Friedman, Sloan and Ross
407 Sansome Street, Suite 400
San Francisco, Calif. 94511

Executed on November 1, 1986 at Reno, Nevada.

I declare under penalty of perjury that the foregoing is true and correct.

_____
Kita Browne

Supreme Court, U.S.
FILED
DEC 1 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-424

IN THE SUPREME COURT

OF THE

UNITED STATES

October Term, 1986

RODNEY F. STICH

Appellant

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SOLANO;
COURT OF APPEAL, STATE OF CALIFORNIA,
FIRST APPELLATE DISTRICT;
EMMA W. STICH,

Appellees.

On Appeal from the Court of Appeal
of the State of California

MOTION FOR RECONSIDERATION DISMISSAL OF APPEAL

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TABLE OF CONTENTS

Page

ARGUMENT.....1

BRIEF SUMMARY OF FACTS.....3

I. TOTAL DESTRUCTION OF APPELLANT'S PERSONAL LIBERTIES, HIS PERSONAL AND PROPERTY RIGHTS, WERE OPENLY INFLICTED, IN THE PUBLISHED DECISIONAL LAW BEING APPEALED.....6

II. THIS COURT HAS A RESPONSIBILITY UNDER TITLE 42 UNITED STATES CODE SECTION 1986, AS DOES ANY OTHER BODY WITH POWER TO ACT, WHEN MAJOR CIVIL AND CONSTITUTIONAL RIGHT VIOLATIONS ARE MADE KNOWN....22

III. THE UNITED STATES SUPREME COURT HAS A STATUTORY RESPONSIBILITY TO PROVIDE APPELLANT HIS FIFTH AMENDMENT DUE PROCESS RIGHT TO A MEANINGFUL FEDERAL COURT FORUM.....23

IV. THIS COURT HAS BEEN MADE AWARE OF AN AIRLINE CRASH RELATED AVIATION AND GOVERNMENT SCANDAL, AND THE CLOSE RELATIONSHIP TO THE BIZARRE, ILLEGAL, AND UNCONSTITUTIONAL ATTACKS UPON APPELLANT'S PERSONAL LIBERTIES, AND HIS PERSONAL AND PROPERTY RIGHTS.....25

CONCLUSION.....29

Certification.....next to last page

Proof of service.....last page

TABLE OF AUTHORITIES

Cases — Page

Kulko v. California Superior Court
(1977) 19 C.2d 514; 436 US 84.....21

In re Marriage of Stich
(1985) 167 Cal.App.3d 226.....2,24

Rediker v. Rediker,
(1950) 35 Cal.2d 796.....10

Ryder v. Ryder,
(1934) 2 Cal.App.2d 426.....10

Scott v. Scott,
(1958) 51 C.2d 249.....10

Spellens v. Spellens,
(1957) 498 C.2d 210.....10

Whealton v. Whealton,
(1967) 67 C.2d 656.....10

Statutes and Rules

Title 28 U.S.C. § 1247(2).....2,23

Title 42 U.S.C. § 1986.....22, 25

Cal. Civil Code § 4530.....9,15

Cal. Civil Code § 4531.....9,15

Cal. Code of Civil Procedure
§ 410.10 8

Cal. Code of Civil Procedure
§ 418.10(a).....8

Cal. Code of Civil Procedure
§ 1713.5(a)(2)(3).....8

Cal. Evidence Code
§ 666.....9

Cal. Rule of Court 1201(c).....15

Cal. Rule of Court 1207.....16

Cal. Rule of Court 1211.....16

Cal. Rule of Court 1230.....17

Cal. Rule of Court 1232.....17

In accordance with Rule 51 of the United States Supreme Court, appellant petitions this court for rehearing of its dismissal of appellant's appeal. This court dismissed appellant's appeal by notice dated November 10, 1986, extending until December 9, 1986 the time to petition for rehearing.

ARGUMENT

This court dismissed appellant's appeal by first treating the appeal as a petition for Writ cf Certiorari, and then ordering a discretionary dismissal of the "petition." Appellant argues that his jurisdictional statement and reply brief cited the legal requirements entitling him to the protection of an appeal, based upon the unconstitutional decisional law of the State of California, and the unconstitutional interpretation and application of state law by the Superior Court, County of Solano, which have been upheld by the California appellate

courts.

As a matter of law, the appeal should not have been dismissed:

1. Appellant's appeal met the criteria of an appeal; constituted an appeal; and invoked the jurisdiction of the United States Supreme Court under the provisions of Title 28 United States Code Section 1257(2).

2. Appellant's due process right under the Fifth Amendment to the United States Constitution, inter alia, entitles him to the protection of an appeal. He has appealed to this Court the unconstitutional holdings in the published decision, In re Marriage of Stich, 167 Cal.App.3d 226. The unconstitutional holdings of the decisional law is appealed to this court under the statutory authority of 28 United States Code Section 1257(2).

3. The United States Supreme Court has the additional responsibility, under

Title 42 United States Code Section 1986, and by this Court's inherent responsibilities, when a citizen is subjected to massive violations of his civil and constitutional rights, arising from the misuse of government facilities directed to a government "whistle blower" who sought to expose an airline crash related aviation government scandal. It was this exposure and attempted corrective actions, that triggered the unconstitutional attacks which led to the present appeal.

BRIEF SUMMARY OF FACTS

As exists with millions of other persons, appellant is and has been legally divorced, following a bilateral consent divorce proceeding occurring 21 years ago. As in these millions of other divorce proceedings, the court rendering the 1966 divorce based its jurisdiction upon residence of the party bringing the action, and over the other party upon

personal service, upon voluntary submission to the court's personal jurisdiction, and by voluntary appearance via legal counsel.

The appealed decisional law of the State of California holds that none of these bases for personal jurisdiction, available to other citizens of the United States, are available to appellant. The published decisional law upholding the California lower court decisions, holds that California courts will not recognize divorce judgments rendered by courts foreign to California, over residents of such courts, when the courts based their personal jurisdiction upon residence.

Enlarging upon this bizarre, illegal, and unconstitutional holding that is now California law, the published decision approved a massive sequence of illegal and unconstitutional acts to destroy appellant's financial means of continuing his exposure activities of the airline

crash related government and aviation scandal.

The holding denying residence as a base for personal jurisdiction relied upon this unconstitutional holding to unconstitutionally violate, misinterpret, and misapply, California law. The "residence-voiding" holding deprives appellant, and the millions of other persons holding divorce judgments where court jurisdiction was based upon residence, deprives the vast majority of United States citizens who intend to frequently change their place of residence, the right to a divorce, among multiple rights being unconstitutionally violated.

The decisional law of the State of California then enlarged on this major unconstitutional holding, by holding that based upon the "invalid" residence base for personal jurisdiction, that it could void appellant's divorced status that has

already been recognized in divorce judgments registered and confirmed, and registered, in six court jurisdictions throughout the United States.

The decisional law held that based on the "invalid" residence base for personal jurisdiction, that appellant's property rights, protections and obligations, adjudicated in the 1966 divorce judgment, are void; that the property rights appellant acquired as a legally divorced person while residing in Oklahoma, New York, California, and Nevada, are void; that the 1966 judgment eliminating any requirement for either party to pay spousal support, is void; and all other rights adjudicated 21 years earlier are void.

I. TOTAL DESTRUCTION OF APPELLANT'S PERSONAL LIBERTIES, HIS PERSONAL AND PROPERTY RIGHTS, WERE OPENLY INFLICTED, IN THE PUBLISHED DECISIONAL LAW BEING APPEALED.

The unconstitutional holdings that rewrites the United States Constitution, the California law now establishes the following unconstitutional law:

1. California courts can retroactively deny to residents of jurisdictions foreign to California the right to invoke court jurisdiction, the right to obtain a divorce, by denying recognition to the universally applied, and constitutionally acceptable, residence base for personal jurisdiction.

The published decisional law unconstitutionally interpreted and applied state law relevant to accepted bases for court jurisdiction, by holding that a requirement for, and a determination of domicile intent, is required before California courts will recognize the judicial acts of courts foreign to California, the personal and property rights established by prior divorce judgments, or the property rights

acquired as a divorced person following such earlier divorce judgments.

Unconstitutionally interpreted, or unconstitutionally denied to appellant and other divorced persons, are the protections in: (a) California Code of Civil Procedure Sections 410.10 (jurisdiction acquired on any basis not inconsistent with the Constitution, known as California's long arm jurisdiction statute.); (b) Code of Civil Procedure § 1713.5(a)((2)(3) (providing for exercise of court jurisdiction on the basis the person voluntarily appeared and agreed prior to the start of the action to the court's jurisdiction); (c) Code of Civil Procedure § 1713.5(b) (providing that court jurisdiction can be invoked and recognized on other bases recognized by the United States Constitution); (d) Code of Civil Procedure § 418.10(a) (jurisdiction automatically acquired if not objected to within a limited time

after service of process); (e) Code of Civil Procedure § 430.80(a) (objection to jurisdiction waived by failure to object to the personal jurisdiction of the 1966 divorce court); Evidence Code § 666 (requires conclusive presumption that the prior court acted within its lawful exercise of jurisdiction); Civil Code §§ 4530 and 4531 provides for residence as a recognized base for personal jurisdiction, prohibiting the California courts from voiding judgments rendered by other courts, over residents of the other court's jurisdiction, on the holding it would not recognize residence as a basis for personal jurisdiction; California Evidence Code § 666, requiring California courts to give conclusive presumption that the prior court acted in the lawful exercise of its jurisdiction.

Prohibiting denying recognition to prior divorce judgments by refusing to accept residence as a base for personal

jurisdiction, California decisional law, including Rediker v. Rediker (1950) 35 Cal.2d 796; Spellens v. Spellens (1957) 498 C.2d 210; Scott v. Scott (1958) 51 C.2d 249; Whealton v. Whealton (1967) 67 C.2d 656.

2. Property rights that had been determined by a prior court relying for jurisdiction on residence (and submission to the court's jurisdiction), property rights acquired during the next 21 years, can be taken, on the holding that the prior court lacked personal jurisdiction by its reliance on residence and submission to the court's personal jurisdiction. The current law of California is that this property can be divided with a former wife--who declares herself divorced from appellant in her resident State of Texas, and can be confiscated to pay for attorney fees and costs to finance the suit against appellant, and can be confiscated to pay

the unconstitutional sanctions ordered for exercising constitutional procedural due process remedies--all while appellant was in a protected special appearance, without personal and subject jurisdiction existing.

3. Civil and constitutional rights arising from federal decisional law and doctrines of law, California statutory law, California decisional law, and doctrines of law, prohibiting collateral attacks, prohibiting relitigating the issues litigated 21 years earlier, can be violated and circumvented, on the argument that residence is not a recognized base for personal jurisdiction.

4. The decisional law also held that these acts can be ordered taken, not only on the basis that residence is not a recognized base for court jurisdiction, but on the following arguments:

a. On the holding that the former wife

now declares that she was "distraught" during the divorce proceedings occurring 21 years earlier, that therefore the 1966 court lacked personal jurisdiction. This holding permits a taking of civil and constitutional protections, voiding of judicial rights, upon a claim, 20 years later, after exhausting the benefits of submitting to that prior court's jurisdiction, that she was "distraught." There is no requirement for court jurisdiction that the parties be "happy," or at least, not "distraught."

b. On the holding that the 1966 court did not order spousal support to be paid by either of the parties (none was requested), the California courts could "correct" the matter and will relitigate the matter 21 years later that has been res judicata, and reconfirmed in six subsequent registration and confirmation and registration in judicial districts throughout the United States. This

adjudication was exercised by an unconstitutional taking of appellant's money and property rights.

c. Upon the holding that the 1966 court erred by holding, as the parties had themselves agreed, that there was no community property, when in fact the parties owned separate property (totally compatible), that appellant's property rights, already adjudicated, would be distributed on the basis that 21 years after the divorce all property existing at the time of the divorce, and subsequently acquired, was actually community property.

5. Upon the unconstitutional holding that a hearing need not be granted when the California court's personal and subject matter jurisdiction is challenged, and that orders can be rendered while appellant was in a protected special appearance status. The unconstitutional decisional law being

appealed approved, and itself committed, the taking of appellant's property, his personal liberties, including orders to go to jail, orders halting appellant's income for over three years, orders taking and destroying appellant's personal and property rights.

6. The published decisional law held that California courts can strip persons exercising their constitutional travel rights of their personal and property rights, and their liberties and freedom, and be ordered to go to jail, commencing these unconstitutional violations on the unconstitutional holding that residence is not a legal base for personal jurisdiction when exercised by courts foreign to California.

7. The published decisional law held that California courts can deny the protection of a protected special appearance to a party, if the attack upon his personal and property rights is

couched in a domestic relations label. This holding was itself unconstitutional, and unconstitutionally interpreted California Rule of Court 1232 and California Civil Code Section 4356. Appellant was in a protected special appearance status throughout the rendering of the orders that took, and destroyed, his personal and property rights, and his liberties.

These takings occurred without subject matter jurisdiction, as the California Family Law Act and California Family Rules of Court provides no authority for relitigation the personal jurisdiction of a prior court, or any other issue. Further, this authority specifically prohibits asserting any other cause of action or claim under the authority of the Family Law Act or Family Rules of Court. (Civil Code §§ 4530, 4531, California Rule of Court 1201(c), limits the court's subject matter jurisdiction

to dissolution of an existing marriage, nullity of marriage, or legal separation, and provides no authority to void prior divorce judgments, or for relitigating the personal jurisdiction of the 1966 court.) California Family Rule of Court rules 1211 and 1207 prohibit either party from asserting "against the other party ... any cause of action or claim for relief other than for the relief provided in these rules or the Family Law Act."

Appellant was in a protected special appearance status from the December 1982 objection to the court's jurisdiction, from the February 17, 1983 filing of the motion to quash, until January 14, 1986, during which appellant was subjected to a devastating taking of his personal liberties, personal and property rights, orders to go to jail, bench warrants for his arrest, halting of his sole source of income for four years, taking and destruction of his property, foreclosure

actions and loss of his home. These massive unconstitutional violations had as their initial source of "authority" the holding that residence is not a legal base for personal jurisdiction!

Constitutional interpretation of California law prohibited the targeted destruction of appellant. California Civil Code §§ 4356 provides for a protected special appearance following the raising of an objection to the California court's personal jurisdiction.

Concurrent protection was provided by, inter alia, California Rule of Court 1232(a), as does federal and state decisional law. Rule 1232 states: "A defense which is raised by a motion to quash pursuant to Rule 1230 is not waived by later filing a response." Appellant immediately objected to the jurisdiction of the California courts in his first response to the petition for dissolution of marriage, and then followed with a

motion to quash. The California court accepted the filing of the motion to quash, and rendered a decision on the motion--three years later, on January 13, 1986.

8 The published decisional law enlarged upon its own unconstitutional holdings, by an unconstitutional application of California law, as argued in appellant's brief. The current decisional law being appealed held that California courts can severely punish appellant, or any other divorced person, who exercises the specific procedural due process remedies (motion to quash, petition for writ of prohibition, appeal) when a legally prohibited collateral attack is made upon a prior divorce judgment; upon previously adjudicated personal and property rights; when personal and property chaos is wrought by a holding that residence is not a recognized base for personal

jurisdiction. The appealed decisional law holds that divorced persons must willingly abandon fundamental constitutional rights that are specifically provided by California procedural due process law, allow personal and property rights to be voided in violation of state, federal and constitutional law, and then relitigated under the unconstitutional holdings of the California courts. For not abandoning these constitutional protections appellant was openly punished in the appealed decisional law, with orders totaling approximately $50,000, on top of orders halting appellant's income for almost four years.

10. The published decision establishes as California law the holding that the subjective mental state of at least one of the parties must be a basis for personal jurisdiction, establishing an intent to reside forever in that court's

jurisdiction.

This bizarre holding unconstitutionally intrudes into the privacy, and into the due process rights, of residents of jurisdictions foreign to California, and into the sovereign rights of other courts. It further denies the right to a divorce to those persons whose life style, desires, or financial necessity, requires a change of residence. to obtain a divorce is unconstitutional by abridging the party's right to change residence. This bizarre twisting of constitutional and civil rights are now the holdings in the decisional law appellant is appealing to this Court, as provided by statutory law and the Fifth Amendment protection of the United States Constitution. are the law in the State of California.

Further, California courts exert jurisdiction over United States citizens on bases other than domicile. California

statutory law and court practice provides strictly for residence as a base for personal jurisdiction, although denying this right to appellant. Further, California courts will exercise jurisdiction over residents of other states, as in Kulkio v. California Superior Court (1977) 19 C.2d 514; 436 US 84, the California court recognized its bizarre holding that it had jurisdiction over a New York State resident to order his to pay money, on the basis that a New York father allowed his daughter to visit the State of California. Simultaneously, it denies to appellant, and to the millions of other divorced persons where the prior court jurisdiction was based upon residence, the right to invoke court jurisdiction in the place of residence, under the universally accepted residence base for personal jurisdiction.

II THIS COURT HAS A RESPONSIBILITY UNDER TITLE 42 UNITED STATES CODE, SECTION 1986, AS DOES ANY OTHER BODY WITH POWER TO ACT, WHEN MAJOR CIVIL AND CONSTITUTIONAL RIGHT VIOLATIONS ARE MADE KNOWN.

Title 42 United States Code Section 1986 provides that any person to whom violations of civil and constitutional rights are made known, who have the ability to act, and who do not act, are liable to the injured party for damages. Appellant argues that the nine justices of the United States Supreme Court have as great a responsibility, and actually far greater, when they have presented to them the massive violations of fundamental constitutional rights in newly rendered California decisional law. The refusal of this Court to act violates its responsibilities, violates appellant's due process remedies, and places the stamp of approval on the